An INTRODUCTION to U.S. COLLECTIVE BARGAINING and LABOR RELATIONS

FIFTH EDITION

HARRY C. KATZ, THOMAS A. KOCHAN,
and ALEXANDER J. S. COLVIN

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Harry C. Katz,
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Preface

This book provides an introduction to collective bargaining and labor relations with a focus on developments in the United States. It is appropriate for students and labor relations professionals, including unionists, managers, and neutrals. The strength of this text lies in its logical coherence and its comprehensive coverage of contemporary developments.

KEY FEATURES

- A three-tiered strategic choice framework that guides the text in a unified manner (presented in Chapter 1).
- A thorough grounding in labor history (Chapter 2) and labor law (Chapter 3).
- Coverage of living wage and minimum wage campaigns and other emerging forms of collective representation that are addressing income inequality in new ways (see especially Chapter 7).
- An examination of the influence of business and union strategies (Chapters 5 and 6) with numerous contemporary illustrations of how those strategies affect collective representation.
- Consideration of the processes of contract negotiation (Chapters 8 and 9) and contract administration (Chapter 11), with frequent comparisons to nonunion practices and developments.
- Examination of the special aspects of collective bargaining in the public sector (Chapter 13).
- A look at global issues throughout the text and in a separate chapter on international issues (Chapter 14) and a chapter on labor relations in other countries (Chapter 15). Chapter 14 analyzes the labor relations issues multinational corporations face, including labor rights issues associated with global supply chains. Chapter 14 also analyzes the growing influence of NGOs and cross-national unionism.

- A look at how labor relations systems in Germany and Japan and four key transitioning countries (China, India, Brazil, and South Africa) compare to practices in the United States (Chapter 15).
- Boldface key terms in the text and a glossary that defines the terms.
- URLs for related websites at the end of the chapters.
- The textbook is supplemented by an instructor's website resource, which includes an extensive instructor's manual with a test bank, PowerPoint chapter outlines, mock bargaining exercises, organizing cases, grievance cases, and classroom-ready current events materials. The website also includes support materials for mock bargaining that help students engage in contract costing and financial forecasting.

CENTRAL THEMES AND TEXT ORGANIZATION

The text follows a strategic-choice framework that has three tiers: the environmental forces that shape collective bargaining, the process of collective bargaining, and bargaining outcomes. This structure follows in the tradition of John Dunlop's seminal work, *Industrial Relations Systems* by emphasizing the interaction between legal, historical, and political institutions and economic factors.

The text also examines how business and union strategies constrain the process and outcomes of collective bargaining. After considering strategic issues, we analyze the middle tier of bargaining, where contract negotiation and administration are so important. We also examine workplace issues such as the organization of work and communication procedures. Harry Katz and Tom Kochan (with Robert McKersie) originally developed this three-tiered framework in *The Transformation of American Industrial Relations*, 2nd edition (Ithaca, N.Y.: ILR Press, 1994).

Through its examination of the influence of business and union strategies on labor relations, this book provides a broader focus than most other introductory texts do. In addition, we feel that students must also understand the influence of investment strategies, production strategies, union choices, and other strategic forces if they are to accurately comprehend how collective bargaining works in the modern economy. A separate chapter (Chapter 12) looks at workplace outcomes, including participatory processes and their connections to collective bargaining.

Our focus in this book also is broadened by our interest in international developments. We highlight international comparisons and pressures with examples throughout the text and focus on these issues in separate chapters: one on international (cross-national) matters (Chapter 14) and one on labor relations in other countries (comparative issues; Chapter 15). The emergence of a vibrant international workers' rights movement is one of the most exciting developments of the day. Readers should understand the central roles that labor relations problems and labor unions play in these events.

Extensive coverage of developments in the nonunion sector also distinguishes this book from others. The nonunion sector is important in its own right, given the decline in union membership in the United States. In addition, our analysis

of the nonunion sector contributes to an understanding of the pressures and changes occurring within the union sector.

The public sector has increased in importance as unionization has declined in the private sector. We examine the special features of the public sector in Chapter 13.

Our broad focus helps readers gain a full understanding of collective bargaining. We present numerous illustrations throughout the text, some of which are highlighted as cases. Information about labor history and labor law help ground readers in the workings of American collective bargaining. These topics are covered early in the book (Chapters 2 and 3).

Students also can expand their understanding of collective bargaining through the mock bargaining exercises provided on the supplemental website. Some of these exercises involve private sector negotiations, while others involve public sector cases. Full instructions for the exercises and recommendations gained from our own classroom experience are provided in the instructor's manual. Material is available on the website that allows students (even those with no previous computer experience) to cost contract settlement terms and forecast the financial and employment implications of alternative settlements. We have used this material in our classes and highly recommend it.

Grievance arbitration and organizing cases are also provided on the course website. Those cases illustrate a range of contemporary developments and enable students to test their skills as third parties.

INSTRUCTOR'S RESOURCE WEBSITE

The course web site includes an instructor's manual, PowerPoint chapter outlines, a computerized test bank, and other materials that can be used to enhance student learning and classroom discussions. In addition to suggestions about how to use the mock bargaining exercises and supplementary material for those exercises, the instructor's manual includes organizing cases, arbitration cases, and mock bargaining cases. It also includes answers to the end-of-chapter discussion questions, chapter outlines, lecture outlines, and citations to recent news stories and other materials (including YouTube videos) available on the Internet about current labor relations issues. In our teaching of introductory collective bargaining, we have found that the mock bargaining exercises and films help convey how bargaining really works. We would appreciate hearing your reaction to the text and these materials. Instructions for accessing the instructor's manual are on the website of the ILR School's Scheinman Institute on Conflict Resolution at Cornell University (www.ilr.cornell.edu/scheinman-institute).

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A number of people assisted in the development of this book and we are deeply grateful to all of them. We thank Stephen Schmitt, Janina Gunderson, and Alex Woloshyn for research assistance. Fran Benson deserves our heartfelt thanks for advice that helped shape this book. Working with Fran on this project, as with the many other books she has helped us with in the past, has been a real pleasure.

This book is dedicated to our many teachers. It was they who generated the spark that led us into the field of labor relations, a field we continue to find stimulating and rewarding. We hope this book can generate similar sparks for our readers.

Harry C. Katz
Thomas A. Kochan
Alexander J. S. Colvin

Abbreviations

AAA	American Arbitration Association
ACFTU	All-China Federation of Trade Unions
ACTWU	Amalgamated Clothing and Textile Workers Union
ADA	Americans with Disabilities Act
ADEA	Age Discrimination in Employment Act
ADR	alternative dispute resolution
AFL	American Federation of Labor
AFSCME	American Federation of State, County, and Municipal Employees
ALPA	Air Line Pilots Association
AMCU	Association of Mineworkers and Construction Union
AMFA	Aircraft Mechanics Fraternal Association
APWU	American Postal Workers Union
CAD	Computer-aided design
CIC	Common Issues Committee
CIO	Congress of Industrial Organizations
CIR	Committee of Interns and Residents
CIW	Coalition of Immokalee Workers
COPE	Committees on Political Education
COSATU	Congress of South African Trade Unions
C-P	Colgate-Palmolive
CWA	Communications Workers of America
EEOC	Equal Employment Opportunity Commission
EI	employee involvement
ERISA	Employee Retirement Income Security Act
FFP	Fair Food Program
FLA	Fair Labor Association

FLRA	Federal Labor Relations Authority
FLSA	Fair Labor Standards Act
FMCS	Federal Mediation and Conciliation Service
FOSATU	Federation of South African Trade Unions
IAM	International Association of Machinists
IBEW	International Brotherhood of Electrical Workers
IBN	interest-based negotiations
ICFTU	International Federation of Free Trade Unions
ILO	International Labour Organization
IUD	Industrial Union Department
IWW	Industrial Workers of the World
KP	Kaiser Permanente Health and Hospital Corporation
MPRA	Multiemployer Pension Reform Act
NAA	National Academy of Arbitrators
NALC	National Association of Letter Carriers
NBA	National Basketball Association
NEA	National Education Association
NGOs	nongovernmental organization
NHL	National Hockey League
NIRA	National Industrial Recovery Act
NLRA	National Labor Relations Act
NLRB	National Labor Relations Board
NMB	National Mediation Board
NPMHU	National Postal Mail Handlers Union
NRLCA	National Rural Letter Carriers Association
OSHA	Occupational Safety and Health Administration
PACs	political action committees
PATCO	Professional Air Traffic Controllers Organization
PBA	Police Benevolent Association
PERB	Public Employment Relations Board
QC	quality circles
ROC	Restaurant Opportunities Centers
SACTU	South African Congress of Trade Unions
SEIU	Service Employees International Union
SPEEA	Society of Professional Engineering Employees in Aerospace
SUB	supplementary unemployment benefit
TDU	Teamsters for a Democratic Union
UAW	United Auto Workers
UFCW	United Food and Commercial Workers Union
UFT	United Federation of Teachers
UMW	United Mine Workers of America

USPS	United States Postal Service
VEBA	voluntary employee benefit association
WARN	Worker Adjustment and Retraining Notification
WFTU	World Federation of Trade Unions
WRC	Worker Rights Consortium

An Introduction to U.S. Collective Bargaining and Labor Relations

PART I

Introduction

1. A Framework for Analyzing Collective Bargaining and Labor Relations
2. The Historical Evolution of the U.S. Labor Relations System
3. The Law and Legal Systems
4. The Role of the Labor Relations Environment

1 A Framework for Analyzing Collective Bargaining and Labor Relations

DEFINING PRINCIPLES OF THE FIELD OF INDUSTRIAL RELATIONS

Whether we are at work or at leisure, we are affected by the conditions under which we work and the rewards we receive for working. Work plays such a central role in our lives and in society that the study of relations between employee and employer cannot be ignored.

This book traces how members of labor and management, acting either as individuals or as groups, have shaped and continue to shape the employment relationship. Employment is analyzed through the perspective of **industrial relations,** the interdisciplinary field of study that concentrates on individual workers, groups of workers and their unions and associations, and employers and their organizations and the environment in which these parties interact.

Industrial relations differs from other disciplines that study work because of its focus on labor and trade unions and the process of **collective bargaining**. Thus, this book describes how collective bargaining works and helps explain, for example, why it may lead to high wages in one situation and low wages in another.

The study of labor relations focuses on the key participants involved in the process, the role of industrial conflict, and the performance of collective bargaining. This chapter defines these various aspects of labor relations and describes how this book analyzes them.

THE PARTICIPANTS

The key participants (or parties) involved in the process of labor relations are management, labor, and government.[1]

Management

The term **management** refers to individuals or groups who are responsible for promoting the goals of employers and their organizations. Management encompasses at least three groups: (1) owners and shareholders of a company, (2) top executives

and line managers, and (3) labor relations and human resource staff professionals who specialize in managing relations with employees and unions. Management plays key roles in negotiating and implementing a firm's labor relations policies and practices.

Labor

The term **labor** includes employees and the unions that represent them. Employees are at the center of labor relations. They influence whether the firms that employ them achieve their objectives and shape the growth of unions and the demands unions make.

Government

The term **government** includes (1) local, state, and federal political processes; (2) the government agencies responsible for passing and enforcing public policies that affect labor relations; and (3) the government as a representative of the public interest. Government policy shapes how labor relations proceed by regulating, for example, how workers form unions and what rights unions have.

KEY ASSUMPTIONS ABOUT LABOR AND CONFLICT

Labor Is More than a Commodity

One of the most important assumptions that guides the study of labor relations is the view that labor is more than a commodity, more than a marketable resource. For instance, workers often acquire skills that are of special value to one firm and not to another. The possibilities that such workers will able to earn as much "in the labor market" as they can at their existing employer are limited. In addition, changing jobs often costs workers a lot: moving locations can be expensive and can also entail large personal and emotional costs. For these reasons and others, labor is not as freely exchanged in the open, competitive market as other, nonhuman market goods are.

Furthermore, labor is more than a set of human resources that a firm allocates to serve its goals. Employees are also members of families and communities. These broader responsibilities influence employees' behaviors and intersect with their work roles.

A Multiple-Interest Perspective

Because employees bring their own aspirations to the workplace, labor relations must be concerned with how the policies that govern employment relations (and the work itself) affect both workers and their interests and the interests of the firm and the larger society. Thus, labor relations takes a **multiple-interest** perspective on the study of collective bargaining and labor relations.

The Inherent Nature of Conflict

A critical assumption that underlies analysis of industrial relations is that there is an inherent conflict of interest between employees and employers that derives

from the clash of economic interests between workers seeking high pay and **job security** and employers pursuing profits. *Thus, in the study of industrial relations, conflict is not viewed as pathological.* Although conflict is a natural element of employment relations, society has a legitimate interest in limiting the intensity of conflicts over work.

Common and Conflicting Interests

Employers and their employees have a number of common interests. Both firms and their work forces can benefit, for example, from increases in **productivity** through higher wages and higher profits.

No single best objective satisfies all the parties in a workplace. *The essence of an effective employment relationship is one in which the parties both successfully resolve issues that arise from their conflicting interests and successfully pursue joint gains.*

Collective bargaining is only one of a number of mechanisms for resolving conflicts and pursuing common interests at the workplace. In fact, collective bargaining competes with these alternative employment systems. Not all employees, for example, perceive deep conflicts with their employers or want to join unions. In dealing with their employers, some workers prefer individual over collective actions. Others exercise the option of exit (quitting a job) when dissatisfied with employment conditions rather than choosing to voice their concerns, either individually or collectively.[2]

One of the roles of public policy is to give workers a fair opportunity to choose whether collective bargaining is the means they prefer for resolving conflicts and pursuing common interests with their employer.

Tradeoffs When Goals Conflict

Since many of the goals of the major actors—workers and their unions, employers, and the public or the government—conflict, it is not possible to specify a single overriding measure of the effectiveness of collective bargaining. Focusing on any single goal would destroy the effectiveness of collective bargaining as an instrument for accommodating the multiple interests of workers and employers in a democratic society.

Unions could not survive or effectively represent their members, for example, if employers were completely free to suppress or avoid unionization. Likewise, employers could not compete effectively in global or domestic markets if collective bargaining constantly produced wages or other conditions of employment that increased costs above what the market would bear.

THE THREE LEVELS OF LABOR RELATIONS ACTIVITY

In this book, we use a three-tiered approach to analyzing the operation of labor relations.[3] (Figure 1.1 provides the framework for this approach.) First we consider the economic, social, and legal contexts of collective bargaining, then we look at the operation and outcomes of the bargaining system.

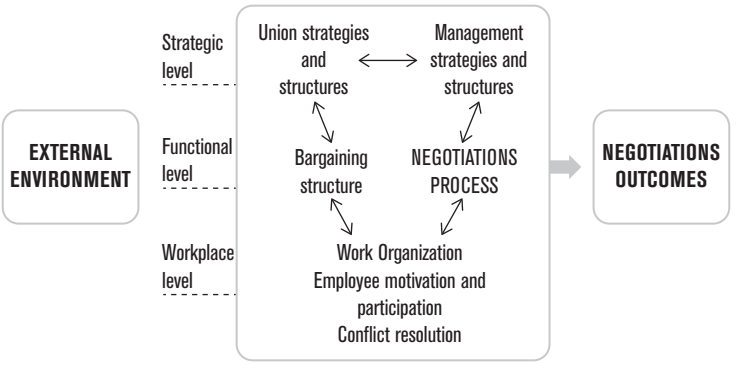

Figure 1.1. The three-tiered approach to the study of labor relations

The top tier of industrial relations, the **strategic level,** includes the strategies and structures that exert long-run influences on collective bargaining. At this level, we might compare the implications for collective bargaining of a business strategy that emphasizes product quality and innovation with a business strategy that seeks to minimize labor costs.

The middle tier of labor relations activity, the **functional level,** or the collective bargaining level, involves the process and outcomes of contract negotiations. Discussions of strikes, bargaining power, and wages feature prominently here.

The bottom tier of labor relations activity, the **workplace level,** involves the activities through which workers, their **supervisors**, and their union representatives administer the labor contract and relate to one another on a daily basis. At the workplace level, adjustment to changing circumstances and new problems occurs regularly. A typical question at this level, for example, is how the introduction of employee participation programs has changed the day-to-day life of workers and supervisors.

It is through the joint effects of the environment beyond the company and the actions of the parties in this three-tiered structure that collective bargaining either meets the goals of the parties and the public or comes up short.

THE INSTITUTIONAL PERSPECTIVE

The perspective that guides our analysis of labor relations was first developed by **institutional economists** at the University of Wisconsin. John R. Commons (1862–1945), the person who most deserves the title father of U.S. industrial relations, defined the essence of institutional economics as "a shift from commodities, individuals, and exchanges to transactions and working rules of collective action."[4] Commons and his fellow institutionalists placed great value on negotiation and on compromise among the divergent interests of labor, management, and the public.

The institutionalists in the United States were heavily influenced in their thinking by the British economists and social reformers Sidney and Beatrice Webb, who were members of the Fabian socialist society. They viewed trade

unions as a means of representing the interests of workers through the strategies of health and burial insurance, collective bargaining, and legislative action.[5]

In following the Webbs, the institutionalists rejected the arguments of Karl Marx. Marx argued that the pain of the exploitation and alienation that the capitalist system inflicted on workers would eventually lead to the revolutionary overthrow of the system. He believed that workers would eventually develop a class consciousness that would pave the way for revolution and the ultimate solution to their problems—a Marxian economic and social system. Marx supported trade unions in their struggles for higher wages, but he believed they should simultaneously pursue the overthrow of the capitalistic system.

There are some interesting similarities in the views of Commons, Marx, and the Webbs. Like Marx and the Webbs, Commons and other institutional economists rejected the view of labor as a commodity, for two fundamental reasons. First, the institutionalists saw work as being too central to the interests and welfare of individual workers, their families, and their communities to be treated simply as just another factor of production.[6]

Second, the institutionalists echoed the Webbs and the Marxist theorists by arguing that under conditions of "free competition," most individual workers deal with the employer from a position of unequal bargaining power. That is, in the vast majority of employment situations, the workings of the market tilt the balance of power in favor of the employer. The selection from Beatrice Webb's classic essay on the economics of factory legislation in Britain, shown in Box 1.1, amply illustrates this argument.

The institutionalists concluded that labor required protection from the workings of the competitive market and that unions could materially improve the conditions of the worker. This led them to advocate two basic labor policies: legislation to protect the rights of workers to join unions and legislation on such workplace issues as safety and health, child labor, minimum wages, unemployment and workers' compensation, and social security.[7] Thus, in addition to making scholarly contributions, the institutionalists served as early advocates of the legislative reforms that became the centerpiece of the New Deal labor policy during the administrations of Franklin D. Roosevelt.

BOX 1.1

Beatrice Webb on the Balance of Power between the Employee and Employer

If the capitalist refuses to accept the workman's terms, he will, no doubt, suffer some inconvenience as an employer. To fulfill his orders, he will have to "speed up" some of his machinery, or insist on his people working longer hours. Failing these expedients he may have to delay the delivery of his goods, and may even find his profits, at the end of the year fractionally less than before. But, meanwhile, he goes on eating and drinking, his wife

and family go on living, just as before. His physical comfort is not affected: he can afford to wait until the labourer comes back in a humble frame of mind. And that is just what the labourer must presently do. For he, meanwhile, has lost his day. His very subsistence depends on his promptly coming to an agreement. If he stands out, he has no money to meet his weekly rent, or to buy food for his family. If he is obstinate, consumption of his little hoard, or the pawning of his furniture, may put off the catastrophe; but sooner or later slow starvation forces him to come to terms. And since success in the higgling of the market is largely determined by the relative eagerness of the parties to come to terms—especially if this eagerness cannot be hidden—it is now agreed, even on this ground alone, "that manual labourers as a class are at a disadvantage in bargaining."

Source: Excerpt from Mrs. Sidney Webb, ed., *The Case for Factory Acts* (London: Grant Richards, 1901), 8–9.

THE PERFORMANCE OF COLLECTIVE BARGAINING

The performance of collective bargaining can be assessed by looking at how well it serves the goals of the parties involved and the public.

Labor's Goals

To see if collective bargaining is meeting labor's goals, we can examine wages, benefits, safety conditions, and employee job satisfaction. A number of union-management efforts now seek to improve the quality of working life and employment security. Because many of these joint processes have expanded beyond the traditional agenda of collective bargaining, their success or failure in serving workers' interests must also be assessed.

Management's Goals

Management is concerned with the effects of collective bargaining on labor costs, productivity, profits, product quality, and the degree of managerial control. Management also has goals related to various personnel issues, such as employee turnover, motivation, and performance. All of these economic performance and personnel goals can be used to evaluate the extent to which collective bargaining aids or hinders employers' quests for competitiveness in the **product market**.

Management, particularly in the United States, historically has not been very sympathetic to collective bargaining. The vast majority of U.S. employers have resisted unionization of their employees and have often been only reluctant participants in collective bargaining. Managers tend to evaluate the performance of collective bargaining by comparing it with the nonunion alternatives.

The growing sophistication of human resource management strategies and the increasing competitive pressures from nonunion firms have led more and more corporate managers to scrutinize the performance of their labor relations functions. Most top executives are trying to make sure their labor relations strategies are

consistent with their business strategies. For example, firms in the steel, auto, aerospace, and apparel industries have worked with unions to modify labor relations practices in order to make new investments in plant and equipment pay off.

The Public's Goals

Identifying the goals of collective bargaining for the public and the government is a more difficult task. Government labor policy should promote both industrial peace and union democracy. In addition, government officials are concerned about the effects of collective bargaining on inflation and unemployment and on working conditions such as safety and health, **equal employment opportunity**, and **income security**.

The freedom to participate in a labor movement is important to any political democracy. Thus, it is also necessary to assess whether public policies and private actions are producing a bargaining system that strengthens democracy at the workplace and in the society at large.

Since less than one-fifth of the U.S. labor force is now represented by trade unions, the regulation of employment conditions involves more than just collective bargaining. In some instances, public policies preempt collective bargaining by creating alternative ways to address labor-management issues, for example through government regulation of pensions.

THE PLAN OF THE BOOK

The chapters that follow analyze labor relations by simultaneously moving across and downward through Figure 1.1. The framework in Figure 1.1 is broader and more dynamic than most models of collective bargaining. In particular, it emphasizes the range of choices management, labor, and government policy makers have when they respond to changes in the economic environment (such as increased competition or changes in technology) instead of treating technology or competitive pressures solely as overriding constraints.

The following discussion provides a more elaborate description of the terms used in Figure 1.1. This material also sketches out in more detail the topics included in each chapter and their connections as the book moves across and downward through Figure 1.1. The reader may wish to return to this material from time to time as a review strategy to put the individual topics and chapters in perspective.

The External Environment

The external environment sets the context for collective bargaining and strongly influences the bargaining process and bargaining outcomes. The **external environment** includes five key elements: the economic environment (micro and macro), law and public policy, the demographic context, social attitudes, and the technological context. The laws and public policies that regulate collective bargaining are a key aspect of the environment and are outlined in Chapter 3. Chapter 4 describes how each component of the environment influences the process and the outcomes of bargaining.

The external environment effects the **bargaining power** of labor and management. For example, a law that grants employees the right to strike is important because it facilitates the emergence of collective bargaining and thereby alters the balance of power between labor and management. The ensuing shift in the balance of power is particularly noteworthy to the extent that it leads to different employment conditions (such as higher wages) than would otherwise exist. In this way, something in the external environment (a law) affects the frequency of bargaining (the bargaining process) and wage levels (a bargaining outcome).

Similarly, the economic features of product and labor markets affect the behavior of labor and management and the outcomes of collective bargaining. Workers and unions, for example, have more bargaining leverage and are able to win higher wages during contract negotiations when it is easier for striking workers to find temporary or alternative employment. Thus, an aspect of the macroeconomy (the unemployment rate) influences workers' bargaining power and bargaining outcomes (the wage settlement).

Do the provisions of typical collective bargaining contracts adequately address the needs of women in the work force, youths, and the elderly? Is the government enforcing the existing labor laws? These questions concern additional interactions between the external environment (in the first case, the demographic context; in the second case, the public policy context) and collective bargaining.

As the book traces how the various components of the external environment affect the bargaining process and bargaining outcomes, the discussion moves across the middle tier of the framework outlined in Figure 1.1. At the same time, it is important to be aware of how the strategies and structures of labor and management both shape the middle tier of labor relations activity and have impacts on the workplace. Thus, as the text moves across the framework, the analysis also simultaneously moves downward through our three-tiered framework. The framework starts at the top by first considering the roles labor and management strategies and structures play.

The Strategic (Top) Tier

At the top tier of labor relations activity are the strategies and structures that guide the long-term direction of U.S. labor relations.

Management's Strategies and Structures

The strategies and structures of management are critically important in shaping the evolution of labor relations. For instance, is a given company's top management content to work with its union(s) over the long run or is it fundamentally committed to devoting its resources to nonunion pursuits and operations?

Chapter 5 analyzes the various strategic options available to managers, including the growing availability and sophistication of nonunion alternatives to collective bargaining. What leads management to aggressively seek to avoid unions in one case and negotiate with the unions that represent its employees in another situation and focus on improving the existing collective bargaining relationship? To help us understand what motivates management, Chapter 5 contrasts the key features

of some of the nonunion employment systems with the features of both traditional union practices (the **New Deal system**) and the participatory practices that have emerged in a number of unionized settings.

While management strategies are important, so are the various structures that management uses to organize itself for labor relations. The second part of Chapter 5 considers how management organizes its labor relations staffs.

Labor's Strategies and Structures

Labor's strategies and structures also exert a critical influence on the course of labor relations. Chapter 6 addresses the various aspects of labor's strategic issues. For example, is a given union leadership committed to maintaining a distanced and adversarial posture in negotiations or is it interested in exchanging new forms of flexible work organization for greater control over the design of the production process? Should the labor movement focus on political action or seek to improve employment conditions through collective bargaining? These are just two of the strategic issues the labor movement faces.

The labor movement, like management, structures itself in its efforts to shape labor relations. Chapter 6 describes the organizational structure of the American labor movement and delineates the division in the responsibilities of the American Federation of Labor–Congress of Industrial Organizations (AFL-CIO), national unions, and local unions.

A key strategic issue for the labor movement today (perhaps the single most important issue) is the proportion of the work force that belongs to a union. Concerns about union organizing have led to changes in the leadership and strategic direction of the AFL-CIO and the emergence of a rival Change to Win labor federation. To understand the context for these changes in the strategic approach of the labor movement, Chapter 6 traces current union membership figures and some of the trends. This chapter also explains why union membership has declined so substantially in the United States.

The emphasis in this book on the strategic level of labor relations activity contrasts with most traditional treatments of unions and employers. The traditional approach focuses on a narrow concept of the internal management structure for labor relations or on the wage objectives and internal politics of unions. Today, an understanding of the links between business and union strategies and collective bargaining is needed to interpret or to participate in the bargaining process.

The Functional (Middle) Tier

The middle tier of activity in a bargaining relationship is the heart and soul of the bargaining process. This tier is the arena where the process of contract negotiations takes place. It is here also that the terms and conditions of the labor agreement (the outcomes of bargaining) are established and periodically modified.

Union Organizing and Bargaining Structure

The formation of unions and workers' expression of interest in union representation precedes negotiations and the determination of bargaining outcomes. In the

United States, unions establish their right to represent workers in defined **bargaining units** through the votes of prospective members in a **representation election.** Thus, the first stage in our discussion of the process of bargaining (in Chapter 7) is a consideration of how representation elections are held and the laws that regulate the conduct of those elections.

Unions have not fared very well in the representation elections held in the United States, particularly since the early 1970s. Thus, an analysis of union organizing must consider some of the tactics management has been using with great success and some of the recent steps unions have taken to increase their membership.

A critical factor that shapes the form and often the outcomes of organizing is the structure of the bargaining unit, the second major topic addressed in Chapter 7. **Bargaining structure** refers to the scope of employees and employers who are covered or are in some way affected by the terms of a labor agreement. For example, are a number of different employers covered by a single **collective bargaining agreement**? Does a given company bargain with one union or with many? Does a given union represent workers with diverse or with homogeneous skills?

The structure of bargaining in the United States is highly decentralized: the U.S. Bureau of Labor Statistics estimates (no exact census has ever been attempted) that somewhere between 170,000 and 190,000 separate collective bargaining agreements currently exist in this country. This figure may overstate the degree of decentralization of bargaining, however. An informal process known as **pattern bargaining** often operates to tie separate agreements together, so that a change in one agreement leads to similar changes in other agreements within the same firm, region, or industry. For instance, the United Auto Workers union, which represents workers in both the auto parts and the auto assembly sectors, regularly has tried to extend the contract improvements it has won in the assembly plants of the major manufacturers to the parts-producing plants owned by other companies.

Chapter 7 explores how the strength of pattern bargaining and other aspects of bargaining structures change over time. This analysis demonstrates the important links between bargaining structure and other concepts in the framework.

The Negotiations Process

At the heart of union-management relations is the negotiation of collective bargaining agreements, the focus of Chapter 8. When a union wins the right to represent a group of workers, the next phase in the bargaining process involves the union's (and workers') efforts to negotiate a favorable collective bargaining agreement. The **negotiations process** is a complicated affair, involving tactics, strategies, and counterstrategies on the part of both labor and management. Given the mixed-motive nature of collective bargaining, the parties are often torn in negotiations between their conflicting and common interests. In this chapter, we examine the strategies some parties have adopted in recent years to maximize the joint

gains in bargaining through a so-called **interest-based bargaining** approach. What makes the subject of negotiations particularly challenging is its dynamic nature.

Analysis of the process of negotiations considers the following types of questions:

1. How can the dynamics of the negotiations process be described and explained?
2. What causes strikes to occur in some negotiations and not in others and to vary in frequency and intensity over time and across industries?
3. What roles do union and business strategies play in shaping the negotiations process?
4. How can the parties increase the joint gains that could benefit both labor and management?

Chapter 8 examines the complete cycle of negotiations, starting with the presentation of opening offers and demands and continuing through the signing of the final agreement.

Impasse Resolution

When labor and management reach an **impasse** in contract negotiations, a variety of techniques can be (and have been) used to settle the dispute. Chapter 9 assesses various **impasse resolution** techniques. This chapter examines the frequency of their use and some of the strengths and weaknesses of each.

Bargaining Outcomes

The bargaining process is important in its own right, but it is particularly relevant for its effects on workers' employment conditions, as analyzed in Chapter 10. Employment conditions are the most important **bargaining outcomes** that are shaped by collective bargaining.

Most, but not all, of the outcomes of the negotiations process are codified in the collective bargaining agreement. Box 1.2 shows the range of the terms and conditions of employment that are covered in many labor contracts. This list illustrates that most of the agreements address, at the very least, the following sets of issues: (1) the levels, payment systems and administration of wages and **fringe benefits**; (2) job and income security; (3) physical working conditions; (4) select personnel management and plant operation practices; and (5) the rights and responsibilities of unions and management.

While the scope and content of bargaining agreements in the United States vary widely, because contract provisions define the rights and obligations of each of the parties, they furnish a starting point for assessing how well the interests of workers, employers, unions, and society are faring at the workplace.

In the last twenty-five years, some companies and unions have moved to simplify the rules contained in their agreements as part of their efforts to lower costs and to increase flexibility in managing human resources. The chapter addresses both the historical growth in the complexity of bargaining agreements and the more recent efforts to streamline some of the work rule provisions.

BOX 1.2
Typical Provisions in Collective Bargaining Agreements

A. Establishment and Administration of the Agreement

Bargaining-unit and plant-level agreements
Contract duration and reopening and renegotiation provisions
Union security and automatic dues collection procedures
Special bargaining committees
Grievance procedures
Arbitration and mediation
Strikes and lockouts
Contract enforcement

B. Wage Determination and Administration

Rate structure and wage differentials
Incentive and bonus plans
Production standards and time studies
Job classification and job evaluation
Individual wage adjustments
General wage adjustments during the contract period

C. Job or Income Security

Hiring and transfer arrangements
Employment and income guarantees
Supplemental unemployment benefit plans
Allocation of overtime, shift work, etc.
Reduction of hours to forestall layoffs
Layoff procedures, seniority, recall
Work sharing instead of layoffs
Attrition arrangements
Promotion practices
Training and retraining
Relocation allowances
Severance pay and layoff benefit plans
Special funds and study committees

D. Functions, Rights, and Responsibilities

Management rights clauses
Plant removal
Subcontracting
Union activities on company time and premises

Union-management cooperation
Procedures for adjusting to technological change
Work and shop rules
Rest periods and other in-plant time allowances
Safety and health
Plant committees
Hours of work and premium pay practices
Shift operations
Hazardous work
Discipline and discharge

F. Paid and Unpaid Leave

Vacations and holidays
Sick leave
Funeral and personal leave
Military leave and jury duty

G. Employee Benefit Plans

Health and other types of insurance
Pension plans
Profit-sharing, stock purchase, and thrift plans
Bonus plans

H. Special Groups

Apprentices and learners
Handicapped and older workers
Women
Veterans
Union representatives
Nondiscrimination clauses

Source: Adapted from Joseph W. Bloch, "Union Contracts—A New Series of Studies," *Monthly Labor Review* 87 (October 1964): 1184–1185.

The Workplace (Bottom) Tier

The management of conflict and the delivery of **due process** are only two of several key activities that occur on a continuous basis at the workplace level of labor relations activity. Other activities involve motivating and supervising individual workers and structuring work into jobs, groups, or teams and other activities of lower-level management. Should work be organized into highly fragmented jobs or organized by team systems? What does a shift to a team system imply for union leaders and the operation of the grievance system? These questions illustrate the

issues that have been raised by the recent changes that have been occurring at the workplace level.

Administration of the Bargaining Agreement

Much of the workplace interaction between labor and management in unionized settings in the United States focuses on administration of the collective bargaining agreement. At the centerpiece of contract administration are the **grievance** and **arbitration** procedures analyzed in Chapter 11. Some analysts view **grievance arbitration** as the most significant innovation of the U.S. labor relations system.

Grievance and arbitration procedures have been affected by the growth of external laws governing health and safety, equal employment opportunity, and other matters that influence the rights of individuals and add to the responsibilities of both unions and employers. Chapter 11 considers how these external laws also influence the workplace.

Participatory Processes

The negotiation and administration of a collective bargaining agreement have traditionally given employees a way to participate in decisions that shape their work lives and employment conditions. Some employees have made great efforts to go beyond these procedures and become directly involved in business decisions that include quality control measures. Chapter 12 analyzes the variety of participatory processes that have emerged. The text also assesses forms of work organization, including team systems and quality circles, that have become part of labor and management's efforts to improve productivity and product quality.

Participatory processes have sprung up at both the strategic level and the workplace level. The options include forms of employee ownership, **labor-management committees**, union representation on corporate boards, and the workplace processes discussed above.

SPECIAL TOPICS

Chapters 13, 14, and 15 address selected topics that complete our understanding of collective bargaining in the modern economy.

Public Sector Collective Bargaining

The rules and procedures in public sector collective bargaining, examined in Chapter 13, differ from those used in the **private sector** in the United States. The **public sector** employs a wide diversity of employees, including public school teachers, municipal police and firefighters, and the office staffs of city, state, and federal governments. Public employees are not covered by the National Labor Relations Act (NLRA). This chapter considers the extent to which the theories presented in earlier parts of the book carry over to the public sector.

Global Pressures

These days, the labor relations developments that are occurring around the world warrant the special attention they are given in Chapter 14. The labor movement

has been at the forefront of the sweeping political changes that occurred in the former Communist bloc and in newly industrialized countries such as Korea. In these countries, the labor movement is as much concerned with political change as it is with determining work conditions on the factory floor.

International trade and competitiveness have moved to the forefront of economic policy in the United States. There is much discussion about whether globalization has fundamentally increased management's power and advantage. Concern about globalization, for example, has spurred various international workers' rights initiatives. Chapter 14 reviews the effects of globalization and offers examples of recent international workers' rights disputes and campaigns including the increasingly important role **nongovernmental organizations** (NGOs) play.

Labor Relations in Other Countries

Chapter 15 reviews in detail the labor relations practices in other countries (comparative labor relations). It focuses on advanced countries, such as Germany and Japan, and on several transitioning countries, including China, India, Brazil, and South Africa. Labor relations developments in countries outside the United States influence the global economy and help put the U.S. system into perspective. Comparisons with the United States are instructive because U.S. labor relations practices are so distinctive. Recent developments in transitioning countries raise important labor rights questions for actors in both developed and transitioning economies.

The Future of Labor Policy in the United States

Chapter 16 returns to a focus on issues in the United States. This concluding chapter assesses broad public and social policies and their effects on labor relations. In the context of the many changes that are emerging in U.S. collective bargaining, this chapter also considers the various policy options and the merits and implications of the alternative policies.

Summary

Over the last twenty-five years, substantial variation has appeared in labor relations in the United States. Some organizations have made wide use of participatory processes and team forms of work organization, while in other organizations, traditional or even conflict-ridden relationships prevail. The U.S. labor movement is trying a variety of strategies to expand membership and revitalize, including in some cases linking with emerging worker rights groups and community organizations. Global pressures have led management to pursue **outsourcing** options aggressively in many firms and unions are struggling to adapt their representation and organizing strategies to the changes in the nature and location of work that are resulting from those pressures.

In the face of the wide-ranging changes that have come to labor relations, many of the earlier textbooks that have addressed those subjects are now out of date. For some analysts, the collective bargaining of recent years is noteworthy because they have been characterized by modest wage increases or heightened

concern for employment security. For others, it is the decline in private sector union representation that is so unusual. Others see the heightened pressures of globalization or new union organizing strategies as most important. To us, while each of these and other events are noteworthy, it is even more important to understand how the various changes and events fit together as a change in the nature and form of labor relations.

We believe there has been a fundamental transformation in American labor relations that includes changes in the focus of activity from the middle level to both the strategic and the workplace levels. Concern over employment security, union decline, and union and employee engagement in business decisions and other events in the United States can all be understood as parts of this transformation.

We developed the model of labor relations presented in Figure 1.1 in our efforts to comprehend the scope of the changes that are under way. We believe these changes in collective bargaining should be viewed as neither a fluke nor a special case but rather as an illustration of the dynamics of labor relations.

One cannot gain an understanding of recent developments or the workings of labor relations without a sense of history. Chapter 2 offers a historical perspective on the evolution of labor relations in the United States and the wide-ranging changes that have been occurring in collective bargaining in the United States.

Discussion Questions

1. Name the actors, generally and specifically, who are involved in the collective bargaining process.
2. Figure 1.1 provides a guide for understanding how this book is arranged and proceeds in its analysis of collective bargaining. It makes use of a three-tiered framework to analyze labor relations. What are these three tiers?
3. One of the fundamental aims of collective bargaining is reducing conflict between employees and employers. What are some basic assumptions about labor and conflict in this book?
4. What are some of the ways that we judge the effectiveness of collective bargaining for the different actors involved in the process?

Related Web Sites

LabourStart (global labor news source):
http://www.labourstart.org/2013/

LaborNet 2000 Directory of Labor Unions on the Internet:
http://www.labornet.org/links/directory.html

Cornell University's School of Industrial and Labor Relations:
http://www.ilr.cornell.edu/

Suggested Supplemental Readings

Dunlop, John T. *Industrial Relations Systems*. New York: Holt, 1958.

Kaufman, Bruce. *The Origins and Evolution of the Field of Industrial Relations*. Ithaca, N.Y.: ILR Press, 1993.

Kochan, Thomas A., Harry C. Katz, and Robert B. McKersie. *The Transformation of American Industrial Relations*. 2nd ed. Ithaca, N.Y.: ILR Press, 1994.

Webb, Sidney, and Beatrice Webb. *Industrial Democracy*. London: Longmans, Green and Co., 1920.

Notes

1. See John T. Dunlop, *Industrial Relations Systems* (New York: Holt, 1958).
2. See Albert O. Hirschman, *Exit, Voice, and Loyalty: Responses to Declines in Firms, Organizations, and States* (Cambridge, Mass.: Harvard University Press, 1970).
3. For a summary of the theoretical and empirical research on which this model is based, see Thomas A. Kochan, Harry C. Katz, and Robert B. McKersie, *The Transformation of American Industrial Relations*, 2nd ed. (Ithaca, N.Y.: ILR Press, 1994).
4. John R. Commons, *Institutional Economics: Its Place in the Political Economy* (New York: Macmillan, 1934), 162.
5. Sidney and Beatrice Webb, *Industrial Democracy* (London: Longmans, Green and Co., 1920).
6. Commons, *Institutional Economics*, 559.
7. For a discussion of the policies by the early institutionalists advocated that were ultimately passed in the wave of New Deal legislation, see Joseph P. Goldberg, Eileen Ahern, William Haber, and Rudolph A. Oswald, *Federal Policies and Worker Status since the Thirties* (Madison, Wisc.: Industrial Relations Research Association, 1977).

2 The Historical Evolution of the U.S. Labor Relations System

THE ROLE OF COLLECTIVE BARGAINING

Collective bargaining is one way for organized groups of workers and their employers to resolve their conflicting interests. It is by no means, however, the only way to conduct labor relations. Indeed, in the long history of industrial society, collective bargaining is only a recent arrival. Moreover, collective bargaining has had to adapt to changing times and changing values.

This chapter examines the evolution of labor relations in the United States. The history of the labor movement in the United States has included much violence and substantial hardships for the participants. At the same time, there was much ingenuity as economic expansion transformed a nation of immigrants into the world's leading industrial power. The history we recount in this chapter highlights the individuals who played key roles in that transformation.

In this chapter, we begin our discussion of the nature and consequences of these events.

THE COLONIAL AND PREINDUSTRIAL ERA

From the beginning of colonial times to the Revolutionary War, employment relationships were dominated by the master-servant principles inherited from British common law. Some early settlers gained their passage to the United States through **indentured servitude**.[1] Under this arrangement, impoverished workers exchanged their labor for passage to a British colony. The ship's captain provided transportation and food during the journey. When the ship arrived at a colonial port, the captain sold the servant to an employer for a certain number of years (not to exceed seven). Others travelled to the United States in hopes of escaping poverty and food shortages.

The Dominance of Agriculture

Colonial employers were eager for the arrival of these workers, given the general shortage of labor for their farms and plantations. From 1609, when the first slaves

were imported into Virginia, until 1808, when the slave trade was outlawed, indentured servants were supplemented by slaves brought from Africa and the East Indies. In this period, agriculture was dominant and featured large plantations in the South, farms in Quaker Pennsylvania, and family plots in Puritan New England.

Although rural farms formed that backbone of the colonial economy, in urban centers, a growing number of workers provided artisan services—shopkeepers, toolmakers, and blacksmiths. One historian described the origins of the small business entrepreneurs as follows:

> A large proportion of the most successful manufacturers in the United States consists of persons who were journeymen, and in a few instances were foreman, in the work-shops and manufactories of Europe; who having been skillful, sober, frugal, and having thus saved a little money, have set up for themselves with great advantage in the United States.[2]

A Shortage of Skilled Labor

When a shortage of skilled labor appeared in the thirteen colonies, colonial leaders lobbied to have more skilled workers delivered to their shores to help them take advantage of the opportunities for development. Captain John Smith of Jamestown put it this way:

> When you send again, I entreat you rather send but thirty carpenters, husbandmen, gardeners, fishermen, blacksmiths, masons, and digger up of trees' roots, well provided, than a thousand such as we have.[3]

Colonial employers complained that the shortage of skilled labor forced them to pay "excessive rates." One historian estimated that wages for skilled laborers were 30 to 100 percent higher than those paid to comparable workers in England.[4] Because of this, employers were often able to lure skilled workers away from their competitors and from other communities. This practice led the Massachusetts Bay Colony and other colonial government authorities to try to regulate competition by putting an upper limit on wages. These early efforts at government regulation of the labor market generally failed in the face of the strong and growing demand for skilled labor.

Labor Force Diversity

From the beginning, the labor force in the colonies was highly diverse, including indentured servants, slaves, immigrants, well-paid skilled artisans, small shopkeepers and farmers, and both males and females of all skin colors. This diversity became a hallmark of the American labor force and held back the development of a class consciousness that helped unions develop in Europe. The diversity of the work force and expanding opportunities are several reasons why there was little interest in collective organization in the preindustrial days of the eighteenth century.

EARLY UNIONISM

The development of unionism in the colonies was closely intertwined with the development of industry and the industrial revolution. Not all workers were able to easily adjust their work habits to fit the stringent time and discipline requirements of industrial work. Managers in the early mills and factories of New England had to impose strong discipline on immigrants and other first-generation factory workers to make them adapt to the new work system.[5] Box 2.1 is an excerpt from a disciplinary code a New England employer imposed in the early 1800s. It illustrates the lengths to which some employers went in their effort to maintain work discipline.

One reason employers had to go to such great lengths to maintain work discipline was that working conditions were harsh. Box 2.2 describes the working conditions in a southern cotton mill at the turn of the nineteenth century.

BOX 2.1

GENERAL REGULATIONS
To Be Observed by Persons Employed by The
LAWRENCE MANUFACTURING COMPANY

1st. All persons in the employ of the Company, are required to attend assiduously to their various duties, or labor, during working hours; are expected to be fully competent, or to aspire to the utmost efficiency in the work or business they may engage to perform, and to evince on all occasions, in their deportment and conversation, a laudable regard for temperance, virtue, and their moral and social obligations; and in which the Agent will endeavor to set a proper example. No person can be employed by the Company, whose known habits are or shall be dissolute, indolent, dishonest, or intemperate, or who habitually absent themselves from public worship, and violate the Sabbath, or who may be addicted to gambling of any kind.

2d. All kinds of ardent spirit will be excluded from the Company's ground, except it be prescribed for medicine, or for washes, and external applications. Every kind of gambling and card playing, is totally prohibited within the limits of the Company's ground and Board house.

3d. Smoking cannot be permitted in the Mills, or other buildings, or yards, and should not be carelessly indulged in the Board Houses and streets. . . .

Lowell, Massachusetts, 21 May 1833.

Source: Quote in William Cahn, *A Pictorial History of American Labor* (New York: Crown Publisher, 1972), 49.

BOX 2.2
Southern Cotton Mill Towns of the 1800s

The cotton mill village was like one big white family closed off to the external world. Rows and rows of white clapboard houses lined dirt roads leading to the mill, while the mill owner lived some distance away in a mansion.

Workers, mostly women and children, labored sixteen hours a day for wages that were just enough to pay rent on their mill houses and their bills at the general store. Mill workers survived primarily on food grown in their own gardens. Mill owners not only encouraged child labor, they insisted upon it. Some mill villages provided schools, but most did not, and the majority of this first generation of mill workers grew up illiterate. The church was usually built on land owned by the mill which also provided its financial support. Thus sermons frequently followed the theme of hard work, deprivation, and suffering as the path to salvation.

Source: Excerpt from Victoria Byerly, *Hard Times Cotton Mill Girls: Personal Histories of Womanhood and Poverty in the South* (Ithaca, N.Y.: ILR Press, 1986), 12.

The First Trade Unions

Skilled craftsmen were the first groups of workers to challenge employers by joining together and demanding improved wages. Most historians cite the Federal Society of Journeymen Cordwainers, the union of Philadelphia shoemakers organized in 1794, as the first modern trade union in the United States.[6] The shoemakers were joined by printers, carpenters, and other artisans in New York and a few other large cities.

Generally, these unions started when workers jointly agreed on a new wage for their work and laid down their tools if employers resisted the new rate. In other cases, workers formed unions after employers posted wage cuts. Collective bargaining as we know it today did not exist in the colonial period. Either the unilateral demands of one side were met and work continued or employers replaced the strikers with workers who were willing to do the job for the wages they offered. In response to this dynamic, local unions began to coordinate their efforts.

Why Workers Formed Unions

What led workers during the process of industrialization to turn to unions to press their interests? John Commons (see Chapter 1) studied the formation of the earliest American unions in the shoe industry. He argued that unionism was a response to the competition (he labeled them **competitive menaces**) workers faced as a result of the expansion of the market. The sources of these competitors included prison labor, slave labor, indentured servants, apprentices, and child

labor. The competitive menaces led to competition for lower costs (from "bad wares"), lower wages, and worsening employment conditions.

The increased competitive pressures were products of the expansion of markets under way in the economy caused by innovations in transportation. As markets expanded, the unity of production that had existed in the position of the master shoemaker gave way to a division in work responsibilities as first journeymen and then assembly workers were used to make shoes. On the technological side, there was a shift from hand tools to power machinery and the assembly line.

Although a social transformation was occurring simultaneously with the increased competitive pressures, Commons argued that workers and early unions did not react against the work relations or the technology per se. He concluded that unions were a reaction to the ensuing deterioration in wages and working conditions. Thus, in Commons's view, workers turned to unions as a device to improve their lot and not as a mechanism to alter the social relations of production or to gain "control" of the production process.[7]

Early Court Reaction to Unionism

Employment relationships during the early years of industrialization in this country were governed solely by the common-law traditions carried over from Great Britain. Neither any constitutional provision nor any state or federal statutes explicitly addressed the rights of workers or the obligations of employers. It was left to the courts to develop their own interpretations of the rights and responsibilities of the parties to employment contracts.[8]

Common-law rule generally translated into few enforceable contractual or implied rights for individual employees. Most courts, in fact, were outright hostile toward collective action on the part of labor organizations.

The Conspiracy Doctrine

The actions of the shoemakers' union led to a famous trial in 1806 and a court decision that dominated rulings until the 1840s. A group of journeymen cordwainers (shoemakers) in Philadelphia joined together in 1804 and refused to work with people who were not members of their association. The shoemakers also won an increase in their wage rate. The employer of the shoemakers went to court to counteract the workers' and the union's actions. A jury convicted and fined the shoemakers on the grounds that they had formed an illegal **criminal conspiracy** when they created their union. The jury argued that the shoemakers' union was illegal and had unjustly injured shoemakers who were not part of the union. Box 2.3 describes the Philadelphia shoemakers' case in more detail.

State and local courts in many jurisdictions followed the lead this case provided. The courts found unions to be criminal conspiracies that impinged on industrial workers' "freedom" to contract with an employer. The courts issued decisions that limited the ability of workers to unionize or, once unionized, to use strikes, boycotts, or other forms of economic pressure.

The courts reflected the conservative, laissez-faire economic and political culture of the country. Private property was to be protected; combinations of economic

BOX 2.3

The Shoemakers' Case and the Criminal Conspiracy Doctrine

In 1798, the Federal Society of Journeymen Cordwainers managed to boost the wages for making shoes to nearly $1 a pair. The journeymen shoemakers struck again in the fall of 1804, and gained an increase in wages to $2.75 for making a pair of cossack boots, regardless of how they were sold. But after Christmas, when retail orders dropped off, the employers paid a quarter less for "order work" boots (wholesale) and a quarter more for "bespoke" (retail) boots. This wage reduction led to a strike in 1805 when the journeymen demanded a flat price of $3 on both wholesale and retail work. The employers won the strike, and then turned to the courts.

A trial took place [in 1806] in the Philadelphia mayor's court [*Commonwealth v. Pullis*]. The jury was made up of merchants and craftsmen: two innkeepers, a merchant, three grocers, a hatter, a tobacconist, a watchmaker, a tailor, a tavernkeeper, and a bottler. A shoemaker called as one of the jurors was disqualified because of his occupation.

The prosecution (the employers) charged that the shoemakers (the defendants), "not being content to work and labour . . . at the usual prices and" had attempted "unjustly and oppressively to increase and augment the prices . . . and unjustly to exact and procure great sums of money for their work and labour." The shoemakers were said to have "unlawfully, perniciously, and deceitfully" formed an organization that governed members and other journeymen through "unlawful and arbitrary bye laws, rules and orders."

Said the prosecutors, "Our position is that no man is at liberty to combine, conspire, confederate, and unlawfully agree to regulate the whole body of workmen in the city." These charges were brought under the rubric of English common law concerning criminal conspiracy.

The defense argued that any assembly could be judged unlawful under the prosecution's interpretation of conspiracy law. Said one defense lawyer, "A country dance would be criminal, a cotillion unlawful, even a minuet a conspiracy; and nothing but a horn pipe or a solo would be stepped with impunity!"

When the arguments were all in, the jury deliberated for one evening and returned a verdict of guilty. Each of the defendants was ordered to pay $8—about a week's pay—plus the costs of trial, and to "stand committed until the fines were paid."

Source: Excerpt from Gloria Stevenson, "Cordwainers Put Their Soles into Bargaining," in *200 Years of American Worklife* (Washington, D.C.: U.S. Department of Labor, 1977), 29–31.

power, including combinations of labor power, were to be limited; and the individual (not collective) freedom to contract was to be preserved. All these principles worked against workers' efforts to build strong and durable unions.

Organizing Efforts before the Civil War

The combined effects of the criminal conspiracy doctrine and the economic depression that followed the end of the War of 1812 led to the disappearance of most of the early unions. Then, around 1820, as the political and voting rights of white male taxpayers gradually expanded, workers began to form **workingmen's political parties.** The two largest workingmen's parties were located in Philadelphia and New York. These parties were short-lived and generally disintegrated over internal disputes about which candidate to support in the election of 1832, which put Andrew Jackson in the White House.

The failure of the workingmen's parties to put together an effective political coalition to advance labor's interests was only the first in a long sequence of failed political efforts by labor parties over the course of U.S. history.

Labor was making significant economic strides during these years, however. In the textile mills of New England, workers successfully agitated for limitations on the use of child labor. Skilled workers in New York were the first to end the practice of working from "can't see to can't see" (sunup to sundown), and gradually the 10-hour day became the accepted norm in other industries. Later, Andrew Jackson's brand of people's democracy brought a recognition of the need for a public education system to provide the labor force needed for the expanding economy.[9]

The 1830s also brought the rise and fall of the first effort to create a national union. By this time, manufacturing was beginning to grow in New England, and various small unions of skilled artisans had been formed. The goal of the National Trades Union, like the umbrella organizations that followed in later years, was to bring separate unions together to promote the interests of all workers. The National Trades Union met in annual conventions three times in New York in the period 1832 to 1837 and then collapsed in the depression of 1837.[10]

By the 1840s, the great wave of immigrants from Europe was in full force. The skilled and highly disciplined northern European carpenters, mechanics, and farmers were joined by the poorer and less skilled Irish who, along with the slaves in the South, continued to expand ethnic and religious diversity in the labor force. Some immigrants, such as the Jews from Russia and Poland who settled in tight communities in New York and several other large cities, carried a tradition of union organizing with them to the United States. In general, however, the ethnic diversity and competition among workers of different ethnic and skill levels made collective organization difficult.

The Utopian Movements

During the mid- and late 1800s, new approaches to collective organization based on various utopian principles were put forward. Members of the **utopian movement** proposed the creation of communities of citizens, workers, and managers

who would work and advance together. Their aim was to avoid the divisive and dehumanizing effects of the factory system.

Box 2.4 summarizes the ideas of Horace Greeley, one of the most famous utopian thinkers. The utopians' vision must have sounded like an attractive alternative to workers in the nation's first factories, and these ideas gained a strong following. However, the diversity in the working class, the lure of rising real wages, and the opportunities to move west limited the appeal of the utopian cause.

The Means-Ends Doctrine: *Commonwealth v. Hunt*

Unions were helped by a shift in the courts' interpretations of the criminal conspiracy doctrine in the 1840s. The most famous decision came in 1842 in ***Commonwealth v. Hunt***. In that case, that Massachusetts Supreme Court ruled that unions per se were not illegal conspiracies; Chief Justice Lemuel Shaw decided that the court had to examine how unions pursued their goals before categorizing a union as a conspiracy.

Courts had to assess whether unions had abused their power or had violated the constitutional rights of workers or private property holders in taking any given action. Thus, a **means-ends doctrine** emerged in court decisions by

BOX 2.4
Horace Greeley

Among the most effective utopian reformers was Horace Greeley, the editor of the *New York Tribune.*

"The earth, the air, the waters, the sunshine, with their natural products, were divinely intended . . . for the enjoyment of the whole human family," stated Greeley. "But as society is now organized, this is not, and cannot be done. . . . "

"The right of owning land is one thing," Greeley said. "The right to own thousands and even millions of acres of land is another. I condemn the system of land monopoly."

Greeley's voice, loud and shrill, was one of many being raised for the cause of "elevating the masses." As Emerson said: "Greeley does the thinking for the whole west." And, indeed, the words of Bayard Taylor, the writer, were accurate when he said: "The *Tribune* comes next to the Bible all through the west."

Perhaps of all Greeley's many directives to his readers, the one most remembered was "Young man, go west and grow up with the nation."

The fact that there were available lands in the west theoretically permitted a method of escape for the industrial workers. Some working men and women did go west to escape from industrial work.

Source: William Cahn, *A Pictorial History of American Labor*, 3rd printing (New York: Crown Publishers, 1976), 71–72.

which courts assessed both the means unions used and the effects of union actions but did not assume that unions were inherently illegal.[11] By the late 1800s, judges had generally turned from restricting the right of unions to exist to issuing injunctions that limited the ability of unions to strike, picket, or boycott employers. This shift in the courts helped unions, but it did not eliminate the many barriers that impeded their expansion.

Yellow-Dog Contracts

One way unions continued to be limited was through employers' use of **common law** in their dealings with employees. Employers in this period could require employees to sign a **yellow-dog contract,** a type of loyalty oath that stated the employee would neither join nor participate in the activities of a union. Since courts would enforce these contracts, employees could be fired if they later became involved with a union. Yellow-dog contracts also provided the basis for legal action against union **organizers** on the grounds that they were interfering with a contractual relationship.

The Labor Wars

From 1860 through the first decade of the twentieth century, there was a series of bitter and sometimes violent struggles between workers and their employers. Some of these struggles were local and concerned only workers and a single employer, while others spread to include workers across the country.

The nation's coal fields were the site of some of the most violent disputes. Worker rebellions in coal mines were often triggered when mine owners unilaterally cut wages, in some cases by as much as a third.

A secret association of militant Irish miners formed the **Molly Maguires** in 1862 to help striking mine workers resist wage cuts. The organization lasted more than ten years, when the Maguires were infiltrated by a spy from the Pinkerton National Detective Agency who had been hired by employers. The Pinkerton agent developed evidence (later judged by most historians to be of dubious validity) that was used to convict and execute ten members of the Molly Maguires for murder.

The battles between the Molly Maguires and employers in the mining industry are only one example of the violent wave of strikes that occurred in the last third of the nineteenth century. Strikes in the railroad, steel, meat-packing, and other growing manufacturing industries often erupted into violent clashes between strikers, strikebreakers, local police, and, in some cases, private security forces.

The hardships that workers of this era experienced produced a number of militant supporters who urged labor to fight back. One of the most colorful was a woman who became known as Mother Jones. (See Box 2.5.)

The Haymarket Affair

A major outburst of violence occurred in Chicago in 1886 in events that came to be known as the **Haymarket affair.**[12] Tensions had been building in Chicago after an employer initiated a **lockout** of workers at the McCormick Harvester

BOX 2.5
"That's No Lady, That's Mother Jones"

During the late 1800s and early 1900s, when gunfire and bloodshed often accompanied workers' attempts to form unions, a sweet-faced old woman known only as Mother Jones tramped over most of the country's coalfields to encourage miners to organize and strike.

Mother Jones looked like a kindly grandmother. A mere 5 feet tall and weighing less than 100 pounds, she generally wore a genteel, lace-trimmed, black dress and a Victorian bonnet. But while Mother Jones appeared gentle, her words and actions were as hard as the life in the mines.

In 1917–18, 87-year-old Mother Jones told a group of striking West Virginia miners, "You goddamned cowards are losing this strike because you haven't got the guts to go out there and fight and win it. Why the hell don't you take your high-power rifles and blow the goddamned scabs out of the mines?"

The miners loved Mother Jones; mine owners, police, and many less radical union leaders looked forward to her death. She was arrested and jailed several times, once for allegedly conspiring to commit murder, stealing a machine gun, and attempting to blow up a train with dynamite. When she died at the age of 100, the priest who delivered her eulogy said, "Sometimes she used methods that made the righteous grieve. . . . but her faults were the excesses of her courage, her love of justice, the love in her mother's heart."

Source: Excerpt from Gloria Stevenson, "That's No Lady, That's Mother Jones," in *200 Years of American Worklife* (Washington, D.C.: U.S. Department of Labor, 1977), 104.

Works plant on the outskirts of the city. At one point a fight broke out between strikebreakers who had crossed a picket line and the locked-out workers. Police arrived to quell the fight and started shooting, killing four.

A rally was called, and 4,000 people gathered the following evening at Haymarket Square in Chicago to protest the shootings. After a peaceful meeting, police arrived, then a bomb went off. The police proceeded to open fire on the crowd, killing ten and wounding another fifty.

Eight anarchists were subsequently charged with the bombing and convicted, although no evidence was ever presented that linked these men to the actual bombing. Four of the men were hanged, one committed suicide, and the others served prison sentences that the governor of Illinois later commuted.

The Homestead Strike

Another illustration of the forces that confronted the labor movement in the late nineteenth century is the **Homestead strike** against the Carnegie Steel Company

in 1892. The Homestead mill had a long-standing wage agreement with the Amalgamated Association of Iron, Steel, and Tin Workers. Then Andrew Carnegie purchased the Homestead mills in 1889 and placed Henry Clay Frick in charge.[13]

In February 1892, Frick and the Amalgamated reached an impasse in their negotiations over a new contract after Frick demanded steep reductions in wages. The workers struck. Frick proceeded to erect barbed-wire fences around the plant, hired 300 Pinkerton (private security) guards, and began to hire strikebreakers. As the Pinkertons were being moved up the Ohio River to guard the plant, striking steelworkers confronted them. A battle followed in which a dozen men were killed on each side and the Pinkertons were driven off.

The strike then spread to other mills, and so did the violence. The strike dragged on for months. With their personal and union coffers wiped out, the steelworkers eventually conceded and went back to work as nonunion workers. The Amalgamated was shattered as a union and steel unionism was eliminated from many of the steel mills in the Pittsburgh area.

The Pullman Strike

Led by Eugene V. Debs in the early 1890s, the American Railway Union instigated a series of industrial actions against the railroad companies and the wage cuts they were demanding.[14] At one point, the union had a membership of 150,000 workers. But then came the **Pullman strike.**

The employees of the Pullman's Palace Car Company lived in a company-run town in Pullman, Illinois. They paid their food, utility, and tax bills to the company. In the depression year of 1893, the company cut workers' wages by 22 percent without any reduction in rents and other services. Employees responded by asking for a wage increase. When the company fired some of the workers who tried to restore the wage cuts through negotiation, Pullman workers then appealed to the American Railway Union for help, and a work stoppage in sympathy with the Pullman workers ensued on railroads across the country.

As the strike spread, the federal government obtained a court injunction against striking railway workers on the grounds that the strike was impeding the delivery of mail and interstate commerce. President Grover Cleveland sent in federal troops to enforce the order. Violence followed, including the burning of freight cars and other railway equipment.

Debs, who had been indicted for conspiracy in restraint of commerce, appealed to other trade unions to strike in support of the railway workers, but his appeal met with little support. Facing a growing number of state and federal troops, the strikers returned to work defeated. Debs (see Box 2.6) went to jail but eventually emerged as the leading American socialist of his time.

THE NEED FOR NATIONAL UNIONS

As transportation networks expanded across the country, workers were confronted by employers who could transfer goods and work across state borders. When this happened, local strikes and union action had limited power. The need for national

BOX 2.6
Eugene V. Debs

Eugene Victor Debs, of Terre Haute, Indiana, was a locomotive fireman from 1871 until the depression of 1873 left him jobless. He was a local officer in the Brotherhood of Locomotive Firemen during the great railway strike of 1877. Although neither he nor his union took part in the strike, Debs was confused and stunned by its violence. He soon emerged as a national officer of the union and later as editor of its official publication. Over the next 15 years, interrupted only by a brief term in political office, Debs played a leading role in the firemen's union.

In the late 1880's, Debs changed from a man who shunned strikes and their associated violence to a socialist labor leader who envisioned the strike as a weapon to achieve economic justice. In 1892, disillusioned by the lack of unity among the railway unions, which remained divided along craft lines, he quit his Brotherhood job and undertook the organization of the American Railway Union (ARU), convinced that only the unification of all railway workers into one association could solve their problems.

An able organizer, shrewd and practical, Debs was immediately successful in his attempts to organize a union of all railroad workers. Within a year, 465 locals with a membership of more than 150,000 were enrolled.

Debs once said, "While there is a lower class, I am in it. While there is a criminal element, I am of it; where there is a soul in prison, I am not free."

Source: Excerpt from Patrick J. Ziska, "The Violent Years of Labor's Youth," in *200 Years of American Worklife* (Washington, D.C.: U.S. Department of Labor, 1977), 99–103.

labor organizations became ever more clear and a number of national trade unions were formed.

Membership in the early national unions, such as the American Railway Union, fluctuated in tandem with movements in the national economy.[15] When times were good, membership expanded and union power increased. When the economy went into one of the severe recessions that marked early American industrialization, union membership waned as organized workers lost the power to press their demands.

THE KNIGHTS OF LABOR

In 1869, the **Knights of Labor** emerged as one of the most important early national labor movements in the United States. The group was part fraternal society and part union. The Knights organized workers on a city-by-city basis

across crafts. The philosophy the Knights espoused proclaimed that all workers had common interests, regardless of skill or occupation.

The constitution of the Knights declared that the ultimate aim of the organization was the establishment of cooperative institutions. The Knights believed that after this was accomplished, labor and capital could then live harmoniously together. To promote these objectives, the Knights favored organization, education, and cooperation.[16] The Knights advocated that trade unions replace strikes with arbitration. They also favored such policies as the establishment of an eight-hour work day, regulation by law of health and safety conditions, prohibition of child labor, and government ownership of railroads, telegraphs, and telephones. The Knights was a reformist organization that sought action by trade unions and by legislation to limit the excesses of industrial society.

The ultimate objective of Terence Powderly, who became head of the Knights in 1879, was the establishment of producers' cooperatives. He felt that strikes and other union activities were destructive and incapable of bringing about the necessary political reforms. He favored negotiation and arbitration.

Splits eventually emerged in the leadership of the Knights concerning the extent to which the organization would devote its attention to trade unionism and the extent to which it would pursue political activity. Many of the **rank-and-file members** of the Knights disagreed with Powderly and favored the use of strikes and boycotts to achieve higher wages.

Membership in the Knights of Labor fluctuated greatly along with the national economy and the fortunes of local branches, peaking in 1886 at around 700,000.[17] Yet by the late 1880s, the influence of the Knights was waning. The organization suffered from the bad publicity surrounding the violence that had emerged in the coal fields, at Homestead, and at Pullman. The Knights also suffered greatly from the publicity following the events that occurred at Haymarket Square in Chicago in 1886.

THE INDUSTRIAL WORKERS OF THE WORLD

The **Industrial Workers of the World (IWW)** provided workers with a radical alternative. The goal of the IWW was to organize labor into industrial unions that would take direct and vigorous action to improve working conditions (see Box 2.7). The IWW also favored the creation of an independent political party to work for the overthrow of capitalism and to establish instead a "co-operative commonwealth."[18] The membership of the IWW came largely from miners and lumber workers.

The IWW developed a reputation as a violence-prone band of misfits who were solely concerned with the overthrow of American institutions. Yet while IWW strikes were often raucous and sometimes turned violent, much of the violence was initiated by local authorities and vigilante groups and IWW members were often the victims of that violence.[19]

Although the platform of the IWW focused on the overthrow of capitalism, at its height the IWW led a series of strikes that focused on improvements in

BOX 2.7
Preamble of the Industrial Workers of the World

The working class and the employing class have nothing in common. There can be no peace so long as hunger and want are found among millions of working people and the few, who make up the employing class, have all the good things of life.

Between these two classes a struggle must go on until the workers of the world organize as a class, take possession of the earth and the machinery of production, and abolish the wage system.

We find that the centering of the management of industries into fewer and fewer hands makes the trade unions unable to cope with the ever growing power of the employing class. The trade unions foster a state of affairs which allows one set of workers to be pitted against another set of workers in the same industry, thereby helping defeat one another in wage wars. Moreover, the trade unions aid the employing class to mislead the workers into the belief that the working class have interests in common with their employers.

These conditions can be changed and the interest of the working class upheld only by an organization formed in such a way that all its members in any one industry, or in all industries if necessary, cease work whenever a strike or lockout is on in any department thereof, thus making an injury to one an injury to all.

Instead of the conservative motto, "A fair day's wage for a fair day's work," we must inscribe on our banner the revolutionary watchword, "Abolition of the wage system."

It is the historic mission of the working class to do away with capitalism. The army of production must be organized, not only for the every-day struggle with capitalists, but also to carry on production when capitalism shall have been overthrown. By organizing industrially we are forming the structure of the new society within the shell of the old.

Source: Quoted in Paul F. Brissenden, *The I.W.W.: A Study of American Syndicalism,* 2nd ed. (New York: Columbia University Press, 1920), 351–352.

wages and working conditions. The IWW was never able to attain a large membership. It suffered from a poor image and a tension between its bold political goals and the more practical objectives much of its membership favored.

When World War I began, "Big Bill" (William D.) Haywood and other leaders of the IWW opposed U.S. involvement and favored neither side in the conflict on the grounds that only capitalists would benefit from the war. Haywood and other IWW activists were eventually tried for sedition, and the IWW faded from the scene.

INJUNCTIONS AND ANTITRUST RULINGS

Unions faced additional difficulties in the early 1900s when the courts began to find that union actions were a violation of **antitrust legislation.** Federal antitrust legislation had passed Congress in an effort to protect consumers against the power expanding business combinations had acquired.

The Sherman Antitrust Act

The **Sherman Antitrust Act** of 1890 declared that every contract, combination, or conspiracy that restrained trade across state boundaries was illegal. The act did not refer directly to unions because members of Congress had business trusts and monopolies in mind, not unions, when they passed the law. Nevertheless, courts began to apply the Sherman Antitrust Act to unions.

The most celebrated antitrust case against a union (the **Danbury Hatters' case**) occurred in 1908. The United Hatters of North America had called for a consumer boycott against the D. E. Loewe Company in an effort to gain union recognition. The union then went a step further and called for boycotts against other firms doing business with Loewe, a tactic known as a **secondary boycott.** The secondary boycott was directed at retailers, wholesalers, and customers and proved to be successful. In response, Loewe and Company went to court.

The U.S. Supreme Court eventually heard the case and ruled that unions were covered under the Sherman Antitrust Act. Specifically, the court directed the United Hatters to pay $250,000 in treble damages to the company.

The Clayton Act

Unions campaigned aggressively against the use of court injunctions and succeeded in gaining passage of the **Clayton Act** in 1914. The act declared that "the labor of a human being is not a commodity or article of commerce." Labor leaders thought this language would lead to the end of labor injunctions. However, courts interpreted the act narrowly, and unions continued to face judges who issued injunctions that limited the ability of unions to strike, picket, or boycott employers.

The Norris-LaGuardia Act

It was not until passage of the **Norris-LaGuardia Act** in 1932 that clear language outlawing the use of injunctions in most labor disputes was signed into law. The Norris-LaGuardia Act also outlawed yellow-dog contracts. Other provisions of the Norris-LaGuardia Act endorsed workers' rights to strike and to take other collective actions in their self-interest. These provisions foreshadowed the more comprehensive endorsement of collective bargaining that was to come with the passage of the National Labor Relations Act in 1935.

The Norris-LaGuardia Act lacked enforcement procedures. Thus, union recognition and collective bargaining remained a voluntary process between labor and management.

BOX 2.8
Samuel Gompers

Samuel Gompers was proud of being a "practical" man. He believed in applying sound business practices to the union movement. He was not a theorist, but was convinced of the importance to labor of fighting for immediate aims. Once asked the objectives of the A.F.L., he reportedly answered with one word: "More."

The A.F.L. under Gompers avoided politics in the usual sense. "No party politics, be they democratic, republican, populist, socialist or any other, shall have a place in the Federation," said Gompers. But the A.F.L. did play an important role, under pressure from its members, in helping win social and labor legislation, nationally and in the states. Gompers was skeptical of some legislative proposals supported by liberal leaders, even opposing as a socialist trend government health, unemployment insurance, and old-age pensions. Gompers believed labor's gains should be won largely by collective bargaining. But he did lend the A.F.L. influence, which was considerable, for or against numerous other legislative efforts.

Source: Excerpt from William Cahn, *A Pictorial History of American Labor* (New York: Crown Publishers, 1976), 205–207.

THE RISE OF THE AFL

The **American Federation of Labor (AFL),** founded in 1886, overcame the opposition of employers and the courts and built a membership able to survive the ups and downs of **business cycles**. The AFL was led by Samuel Gompers, a former cigar maker (see Box 2.9), for all but one year between 1886 and his death in 1924.

Business Unionism

The AFL espoused a **business unionism** philosophy. In contrast to more radical forms of unionism that seek to overthrow capitalism or make major changes in the relationship of workers to the means of production, business unionism focuses on incremental improvements in issues such as wages and hours. Gompers expressed this philosophy well when he said that "the trades unions pure and simple are the organizations of the wage workers to secure their present material and practical improvement and to achieve their final emancipation."[20] Business unionism cut a compromise between the reformist Knights of Labor and the radical IWW.

The AFL was in favor of political action through which labor would help its friends and punish its opponents, but it eschewed any permanent political alliances or long-term political objectives. The AFL strategy was to promote the organization of workers into unions that had **exclusive jurisdiction** (that is, only one union

represented a designated group of workers). The AFL strove to use collective bargaining to achieve improved wages and working conditions.

The AFL was (and is) a federation of national unions. It does not negotiate collective bargaining agreements but instead acts as the representative of national unions in political activities and political lobbying. The AFL also provides assistance to national unions in their organizing activities.

Craft Focus

One of the guiding principles of the AFL was that workers should be organized into separate **craft unions.** Each trade—such as carpenters, printers, machinists, and the skilled trades in large manufacturing firms—was to organize workers engaged in these occupations, regardless of the industry or firm in which the workers were employed.

THE EVOLUTION OF MANAGEMENT IN LABOR RELATIONS

A full understanding of labor relations history requires an understanding of the evolution of managerial practices. There is a growing school of thought among historians that it is American management, more than American unions, that makes U.S. labor history and contemporary labor relations practices unique.[21] At the heart of this uniqueness lie two interrelated features of American management—the desire for autonomy from government or any other institution that might limit management's prerogatives and a deep-seated opposition to unions.

The Origins of Factory Management

Over the course of the nineteenth century, a continual expansion of potential markets for manufactured goods was made possible by the growth of the railroad, telephone, and telegraph industries. This increase in markets led employers to adopt the factory system and mass production technologies (the assembly line). Through the factory system, employers gained from economies of scale and low production costs.

"If a man is dissatisfied, it is his privilege to quit." This oft-quoted statement of a steel industry executive during the McKees Rocks, Pennsylvania, strike in 1909 captures the prevailing philosophy of U.S. employers and their response to worker unrest in the years before World War I. Company executives asserted their rights as owners to treat labor as a commodity and to oppose challenges to their authority by unions.

The Drive System

To manage their expanding factories, employers initially gave substantial power to line foremen, who played a key role in the **drive system** of management.[22] In the drive system, foremen controlled hiring, firing, and the general supervision of labor.[23] Foremen's arbitrary and often discriminatory treatment of workers

created extremely high turnover rates among both unskilled and skilled workers. One estimate, for example, put turnover in auto plants before 1913 at 370 percent per year!

The costs of high turnover did not go unnoticed by some company owners. In 1913, for example, Henry Ford decided to introduce the $5-a-day wage for his employees in an attempt to lower employee turnover and to improve the performance of his auto assembly lines.

Around the time of World War I, the combination of tight labor markets, government pressure for wartime production, and a rising threat of unionization led some large firms to establish the professional personnel departments that are described in the next section. But the drive system continued to dominate the workplace in most smaller establishments. And regardless of whether foremen or personnel managers administered personnel policies, one managerial value held constant: unions capable of directly challenging management authority were to be avoided.

Scientific Management

The first important step toward establishing a professional personnel management function in a firm was the introduction of **scientific management.** Although the ideas behind the scientific management movement can be traced as far back as the mid-1800s, Frederick Taylor's promotion of this movement in the first two decades of the twentieth century was critical. Scientific management blended economic incentives and industrial engineering techniques to produce the "one best way" for organizing work. By tying the individual worker's wages to output, it was assumed, the interests of the worker—economic rewards—and the interests of the firm—productivity—could be made compatible.

In the drive system, management's function was to design the jobs and supervise and compensate the work force to eliminate conflicts of interest between workers and the employer. Managers used industrial engineering principles (such as time-and-motion studies) and incentive wages to this end.

Scientific management contradicted the beliefs of those who advocated collective bargaining. Instead of seeing conflicts of interest as an inherent part of the employment relationship, advocates of scientific management argued that appropriate task designs and wage systems could eliminate the sources of conflict between workers and employers. Because the optimal work system was to be determined through "scientific" engineering studies, there was no role for bargaining and therefore no need for union representation.

One lasting effect of scientific management was its advocacy of industrial engineering principles and a narrow division of labor in organizing work. This form of job design and work organization gradually became the standard in the mass-production industries, and unions inherited this design when they expanded their membership in the mass-production industries (such as auto, steel, and textiles) in the 1930s.

WELFARE CAPITALISM, HUMAN RELATIONS, AND THE AMERICAN PLAN

By 1920, another competing method of management was popular. The **human relations movement** (or **welfare capitalism**) focused on the social significance of work and work groups. Human relations theory predicted that satisfied workers would achieve higher productivity. Both those who subscribed to the principles of scientific management and those who followed human relations philosophies believed that by following their principles employers could eliminate conflict with workers, thereby eliminating workers' need for union representation.

As the basic tenets of human relations gained influence in the 1920s, personnel departments gradually expanded in scope and influence. These departments centralized and standardized many of the functions that foremen had previously controlled. Personnel staff developed and administered hiring, firing, discipline, promotion, and compensation policies. Foremen, in turn, were trained to follow these policies.

Management's Response to Unionism in the 1920s

An aggressive **open-shop movement** coincided with the growth of progressive personnel policies during and after World War I. This movement sought to discourage unionization through company-controlled independent unions and the expansion of pension, welfare, and profit-sharing programs. By the mid-1920s, these progressive personnel programs were commonplace among the very largest firms in manufacturing and service industries.[24]

With the growth of progressive personnel policies came a corresponding growth in suppressive anti-union practices, such as industrial espionage, blacklisting of union members or supporters, strikebreaking, and use of private police forces to disband picket lines. Company-controlled unions were set up in chemical, oil, and other large firms.

The combination of progressive and suppressive policies was highly successful in discouraging unions. Union membership fell from 5.8 million members in 1921 to fewer than 2 million members in 1931.

THE RISE OF INDUSTRIAL UNIONISM

As the organization of production moved from small shops to large-scale mass production, the vast array of semiskilled and unskilled production workers was left without a basis for organizing. In addition, the AFL's emphasis on craft organizing made it difficult to counter the power of large-scale industrial corporations. For example, twenty-four different unions with jurisdiction over different craft groups called a strike against the steel industry in 1919. The strike ultimately failed in part because of the inability of these unions to coordinate their efforts.

By the early 1920s, some union leaders and socialists were urging the formation of new **industrial unions** that would organize all production and maintenance workers across an industry, regardless of their skill level or craft. Since this approach to organizing would cut into the jurisdictions of many established craft unions,

Gompers vigorously opposed it, as did his successor as president of the AFL, William Green, and other AFL union presidents.

The CIO's Challenge to the AFL

The debate between the advocates of AFL craft unions and the advocates of industrial unionism came to a head at the AFL convention of 1935. At this convention, John L. Lewis, president of the United Mine Workers and a leading spokesman for industrial unionism (see Box 2.9), lost a crucial vote on the issue of granting

BOX 2.9
John L. Lewis: The Leader and His Strategy

No labor leader played a more important or colorful role in history from the 1930s to the 1950s than John L. Lewis. His skill in capturing the changed political climate of the Roosevelt administration is illustrated by the following handbill used in organizing coal miners in the 1930s.

> The United States Government Has Said LABOR MUST ORGANIZE.... Forget about injunctions, yellow dog contracts, blacklists, and the fear of dismissal. The employers cannot and will not dare to go to the Government for privileges if it can be shown that they have denied the right of organization to their employees. ALL WORKERS ARE FULLY PROTECTED IF THEY DESIRE TO JOIN A UNION.

Organize John L. Lewis did—5 million American workers into industrial unions in the major mass production industries of the nation in about 4 years....

Lewis was the son of a Welsh immigrant coal miner. He went to work in the coal mines at 14 and his quick mind, strong personality, and gift for oratory soon won him election to Illinois union posts. In 1920 Lewis became president of the United Mine Workers of America. From that time until his death in 1960 he pursued the course of organizing the unorganized and representing workers in collective bargaining and political affairs with the vigor and style that is nicely captured in the following excerpt from one of his speeches:

> I have never faltered or failed to present the cause or plead the case of the mine workers of this country. I have pleaded your case from the pulpit and the public platform; in joint conferences with the operators of this country; before the bar of state legislatures; in the councils of the President's cabinet; and in the public press of this nation—not in the quavering tones of a feeble mendicant asking alms, but in the thundering voice of the captain of a mighty host, demanding the rights to which free men are entitled.

Source: Excerpt from B. Kimball Baker, "The Great Depression," in *200 Years of American Worklife* (Washington, D.C.: U.S. Department of Labor, 1977), 142, 150.

charters to industrial unions in the auto and rubber industries. A fight ensued, and Lewis landed a punch on the nose of "Big Bill" Hutcheson, president of the Carpenters' Union. Lewis and his supporters then stormed out of the convention and established the Committee for Industrial Organization as a rival federation to the AFL. Later this group changed its name to the **Congress of Industrial Organizations (CIO).**

The member unions in the CIO enlisted a large number of socialists as union organizers and projected a more militant image in collective bargaining than many of the AFL unions did. At the same time, the CIO and the AFL shared a commitment to the use of collective bargaining as the central means of achieving economic gains for their members.

The National Industrial Recovery Act

The staggering unemployment rates during the Great Depression raised doubts in the minds of workers about whether management was truly commitment to progressive personnel policies. Labor unrest was increasing in both frequency and intensity. Encouraged by the passage of the **National Industrial Recovery Act (NIRA)** in 1933, Section 7(a) of which declared the rights of employees to self-organize, workers began organizing in greater numbers and strikes increased. By 1934, union membership and strike activity had returned to the levels reached in the years immediately after World War I.[25]

But in 1935 the Supreme Court ruled the NIRA unconstitutional. The stage was set for a crucial public policy debate, the ultimate outcome of which was the **New Deal industrial relations system**.

THE NEW DEAL LABOR POLICY

The election of Franklin D. Roosevelt as president in 1932 and the economic and social crises of the Great Depression (described in Box 2.10) gave rise to a new era in federal labor policy. Roosevelt introduced a series of new government programs designed to bolster citizens' purchasing power and to help workers and the poor cope with their economic hardships. The new programs included unemployment insurance, job creation, social security, and the minimum wage. Roosevelt's program became known as the **New Deal**.

The National Labor Relations Act

A critical part of the New Deal agenda was enactment of a new labor policy. The cornerstone of the new national labor policy was the **National Labor Relations Act (NLRA)** of 1935, also known as the Wagner Act after its chief legislative sponsor, Senator Robert F. Wagner of New York. The NLRA was important because it explicitly encouraged collective bargaining. The NLRA gave employees the right to organize themselves into unions, it set standards for union elections, and it specified **unfair labor practices of employers**.

John L. Lewis and his CIO colleagues quickly capitalized on this changing environment by, among other things, imploring workers to join unions with

BOX 2.10
The Great Depression

People perceived the Great Depression in different ways. Some looked at it dramatically, as did British economist John Maynard Keynes when he compared the situation in Europe and on the American continent to the Dark Ages. Others looked at it simply, like the 14-year-old Appalachian boy in Chicago who said, "See, I never heard that word 'depression' before. They would all just say 'hard times' to me."

The bare facts of the situation are eloquent enough. By early 1933 unemployment had increased to about 13 million—about 25 percent of the labor force. A third of these people were between the ages of 16 and 24. Hourly wages were down 60 percent. Industrial output was down by about half. On the farm, income was off by two-thirds, tenancy had doubled. One of every 4 farms was being foreclosed, and 500,000 farm families were living at the starvation level. A million transients were on the road, including 200,000 young people.

Unemployed autoworkers marched on the closed River Rouge Ford plant in Dearborn, Michigan, and four of them were shot by notorious "security guard" Harry Bennett and his thugs.

Former professionals and skilled tradespeople demonstrated potato parers and patent medicines in store windows and sold apples on street corners to the tune of a popular song, "Brother Can You Spare a Dime?" which reflected the desperate times.

A huge band of jobless veterans encamped in Washington and were routed in a needless show of military force which involved future war heroes named MacArthur, Eisenhower, and Patton.

Source: Excerpt from B. Kimball Baker, "The Great Depression," in *200 Years of American Worklife* (Washington, D.C.: U.S. Department of Labor, 1977), 140–141.

slogans such as "The President Wants You To Organize!" (See also Box 2.9.) It was in this new environment that auto workers in Detroit and rubber workers in Akron refused to leave their plants and staged successful **sit-down strikes,** through which they gained collective bargaining contracts. Unrest and worker militancy convinced many employers in the steel industry and other industries that unions and collective bargaining were here to stay.

The Roots of the NLRA in American Practice and Experience

The NLRA was not a completely new or untried way of resolving labor and management conflicts. Instead, the act embodied many of the principles and practices that had demonstrated their fit with American political values and with the practices of many unions and companies. The railroad, clothing, and other

industries, for example, had developed relationships with newly formed unions in the years before the Depression.

The new law also codified many of the policies that the national War Labor Board of World War I (which regulated wages and prices) and the National Labor Board that had been established under the NIRA had recommended and pursued. The law also endorsed the pragmatic form of collective bargaining that the AFL promoted.

However, the law was not passed without vocal and vociferous opposition from employer groups. It was not until the NLRA was ruled constitutional by the Supreme Court in 1937, in ***NLRA v. Jones & Laughlin***,[26] that most firms began to accept the inevitability of collective bargaining.

It was not the law alone that produced the transition to the New Deal labor relations system. Instead, this turning point in labor relations was brought about by the confluence of (1) a shift in political power that accompanied the Depression and the election of the Roosevelt administration, which created the support needed to enact legislation in favor of worker and union rights to bargain; (2) a shift in the strategy of the labor movement away from the craft union and voluntarist model of the AFL under Gompers to the industrial unionism model of organizing and representing workers the CIO promoted; and (3) the passage of a law that provided a stable foundation for collective bargaining.

This was indeed a unique confluence of events. The events surrounding passage of the NLRA were unique because, as labor historian Irving Bernstein has argued, the NLRA was passed at "the most favorable possible moment," when political support for improving the economic conditions of the nation's workers was at its historic high-water mark.[27]

The New Deal labor relations system is examined below using the three-tiered model of the strategic, middle, and workplace levels of labor relations practices.

The Middle Level: Collective Bargaining as the Cornerstone

The enactment of the NLRA signaled the choice of the middle tier of activity as the preferred method for labor and management to jointly address and resolve their differences. Once a majority of workers indicates that they want to be represented by a union, management is required by law to negotiate with that union over wages, hours, and working conditions.

It was hoped that the NLRA would foster industrial peace. It promoted industrial peace in two ways: first, by replacing what had often been violent conflicts over union recognition with orderly election procedures; and, second, by firmly establishing the right of unions to represent employees. Employers can no longer unilaterally terminate their recognition of a union during recessions.

The Strategic Level: Management Acts and the Union Reacts

The NLRA left intact the right of management to make strategic business decisions. As collective bargaining evolved, the principle of "management acts and the workers react" became its key doctrine.[28]

Leaving strategic business decisions to management fit both management's desire for control over the key decisions on resource allocation in the firm and the business unionism philosophy of the labor movement. Even the supporters of industrial unionism held to the view that unions should not seek to participate directly in managerial decision making or to gain control of private enterprise. Instead, unions sought to preserve their independence through preserving a clear separation between union and management duties.

The American labor movement had a moderate agenda for political and social reform. The labor movement had no ultimate political goal of overthrowing the capitalist system but instead sought to improve workers' living standards gradually. Thus, at the strategic level, the New Deal system coincided with the values of many in the ranks of the labor movement, values that management and a large portion of the American public shared.

The Workplace Level: Job Control Unionism

The arrival of established rules for collective bargaining did not produce a revolutionary new system for organizing work. The principles of scientific management had spread in industry as many employers became convinced of the need to rationalize the structure of jobs and the methods of pay. What collective bargaining did do was codify many of the existing work systems in the labor contract.[29]

Written labor contracts met the needs of both management and labor. Labor reaped greater uniformity and fairness in workplace administration and thereby overcame much of the arbitrary power foremen had previously exercised. Management, in turn, achieved the stability in the work force that it needed to take advantage of growing market opportunities. Government policy makers came to value the industrial peace this system provided during World War II and actively promoted this system.

THE POST–WORLD WAR II EVOLUTION OF THE NEW DEAL SYSTEM

The New Deal system gradually spread throughout the United States as union membership expanded from 3.5 million in 1934 to 17 million, or approximately 35 percent of the nonagricultural labor force, by the mid-1950s. Although union penetration peaked in the private sector economy in the 1950s, the New Deal principles continue to shape collective bargaining to the present day. Within this long evolution, however, several distinct stages of development can be identified.

The 1940s: Institutionalization of Basic Principles

The exigencies of World War II demanded that labor and management maximize production of the goods needed to support the war while avoiding both strikes and wage and price inflation. To help achieve these objectives, the Roosevelt administration established the national **War Labor Board (WLB)** in January 1942. The WLB was a tripartite agency composed of neutrals who chaired boards

of inquiry that included representatives of labor and management. Although the agency lacked any legal enforcement power, the tripartite structure, the national commitment to the war effort, and the implicit threat of more direct legislative intervention gave the recommendations of the agency considerable influence. From 1942 to 1945, the WLB succeeded in helping settle over 20,000 labor-management disputes.[30]

In carrying out this role, the board also used its offices to promote wider acceptance of collective bargaining. In fact, many of the actual contracts the board wrote remained in effect, with minor changes, throughout the postwar era.

In addition to its substantive role in helping gain acceptance of collective bargaining, the WLB served as a training group for many of the leading mediators, arbitrators, and government advisors who would later shape the evolution of collective bargaining in the decades after the war. Those professionals shared a deep commitment to a type of collective bargaining that involved little direct government intervention. George W. Taylor, chair of the WLB and a leading teacher and neutral after the war, described his and his colleagues' views as follows:

> One conclusion invariably emerges whenever and wherever "the labor problem" is subjected to impartial analysis. It is: collective bargaining must be preserved and strengthened as the bulwark of labor relations in a democracy. This is just another way of saying that organized labor and management should settle their own differences by understanding, compromises, and agreement without government interference. A rare unanimity of opinion exists about the soundness of collective bargaining as the most appropriate means for establishing conditions of employment.[31]

After the war ended and the WLB was disbanded, a surge of strikes overtook the nation, as illustrated in Box 2.11. The strikes were in part spurred by labor's efforts to gain wage increases that they had forgone during the war. In 1946, more production time was lost because of strikes than in any year before or since.

The strike wave coincided with a general swing toward a more conservative political climate and a switch to Republican control of the Congress. These three factors contributed to the passage of the Labor Management Relations Act, known as the Taft-Hartley Act, in 1947. The act's amendments to the NLRA strengthened management's power at the bargaining table by limiting the right of unions to boycott employers and by establishing a detailed set of rules that governed the obligation of unions to bargain. It also stipulated that the government had the right to intervene in strikes that constituted national emergencies.

All of those changes reflected a shift in the public's view. The postwar strike wave had led many in the public to conclude that unions were too powerful.

Given this turn in the political environment, employers might have attempted, as in previous periods of labor history, to break from their union relationships. However, collective bargaining had become sufficiently entrenched and unions were viewed as sufficiently strong that a rebalancing of labor-management power occurred instead.

Throughout the 1940s, management in the larger unionized firms had taken steps to professionalize their industrial relations staffs. The postwar strike wave

BOX 2.11
The Postwar Strike Wave

With the end of the war, the expected strike wave began. . . . Forty-three thousand oil workers struck in twenty states on September 16th [1945]. Two hundred thousand coal miners struck September 21st. . . . Forty-four thousand Northwest lumber workers struck, seventy thousand Midwest truck drivers, forty thousand machinists in San Francisco and Oakland. East Coast longshoremen struck for nineteen days, flat glass workers for 102 days, and New England textile workers for 133 days. . . .

When G.M. failed to respond to a union offer to have all issues settled by arbitration if the company would open its books for public examination, 225,000 workers struck on November 21st. . . . On January 15th, 1946, 174,000 electrical workers struck. The next day, 93,000 meatpackers walked out. On January 21st, 750,000 steelworkers struck, the largest strike in United States history. At the height of these and 250 lesser disputes, 1,600,000 workers were on strike. On April 1st, 340,000 soft-coal miners struck. . . . The first six months of 1946 marked what the U.S. Bureau of Labor Statistics called the "most concentrated period of labor-management strife in the country's history," with 2,970,000 workers involved in strikes starting in this period.

Source: Excerpt from Jeremy Brecher, *Strike!* (San Francisco: Straight Arrow Books, 1972), 227–228.

further elevated the importance of trained professionals who could help stabilize labor-management relations by establishing formal procedures for negotiating and administering labor contracts. As the large firms adapted to collective bargaining, they served as examples for smaller organizations.[32] Thus, the rise of powerful unions had pushed managers to professionalize labor-management relations.

Unions, too, made several key strategic choices in the 1940s that had an important bearing on the shape of collective bargaining in subsequent years. In the immediate postwar years, conflicts emerged inside unions over the role of Communists in the labor movement. The net result of these battles was that the CIO expelled several Communist-dominated unions (such as the United Electrical Workers) and some individual unions (such as the United Auto Workers) purged Communist party members from leadership positions.

The 1946 round of bargaining in the auto industry illustrates the choices union leaders made that affected the long-term development of collective bargaining. During the 1946 United Auto Workers' strike against General Motors, Walter Reuther, head of the General Motors department of the union, called on GM to open its financial records to the union. Reuther proposed limiting the UAW's wage demands if GM would pledge not to raise prices. If those demands had

been accepted, it would have transformed collective bargaining by expanding union influence to include strategic management issues. But as a result of his demands, Reuther came under heavy criticism from Philip Murray, president of the CIO. Murray urged Reuther to accept the more conventional steel industry wage pattern and to stay out of the managerial decision-making process in order to maintain labor's independence from management. Reuther eventually dropped his proposal and negotiated a conventional wage settlement.

The labor movement chose not to press for inroads into managerial prerogatives and instead focused on improving wages and gradually expanding the scope of issues covered under the contract. Unions chose to follow the practices that the early administrators of the Wagner Act had encouraged and the members of the War Labor Board had nurtured.

The 1950s: A Return to Hard Bargaining

By the 1950s, few differences remained in the bargaining agendas or organizing strategies of the AFL and CIO unions, and the two federations merged in 1955 to become the AFL-CIO. The merger allowed the member unions to focus their energies more directly on expanding the wage and benefit gains that had been introduced in collective bargaining in the 1940s.

In the early years of the 1950s, collective bargaining spread throughout the major firms and unions in key sectors of the economy, including steel, coal, rubber, meat-packing, and transportation. The **scope of bargaining** also continued to expand and began to include such issues as supplementary unemployment benefits, pensions, severance payments for workers dislocated by technological change or plant closings, and a variety of other fringe benefits and working conditions.[33]

But near the end of the decade, a harder line in collective bargaining appeared as firms sought to limit any further expansion of the scope of bargaining or the influence of unions. The most visible example of this was General Electric's policy, which came to be known as **Boulwarism** after Lemuel Boulware, the vice-president of industrial relations at GE who was the architect of the policy.[34] Boulwarism was a management strategy for regaining the initiative in bargaining. GE polled workers to determine their needs and then made one "firm and final" offer in negotiations. This offer reflected the financial condition of the firm and the results of the worker surveys. The courts eventually ruled that Boulwarism was a violation of the bargaining requirements in the NLRA. Boulwarism illustrates the aggressive stance that had spread in management circles, however. In 1959, for example, at U.S. Steel, a 116-day strike occurred over management's right to change work rules. Similar strikes broke out in the late 1950s in the railroad, airline, electrical products, and other industries.

Management's tougher stance paralleled a decline in labor's public image and political influence. In the late 1950s, a series of congressional hearings highlighted corruption in the Teamsters and other unions. The culmination of the congressional debates over internal union affairs was the passage of the Labor-Management Reporting and Disclosure Act (Landrum-Griffin Act) as an amendment to the

NLRA. As spelled out in more detail in the next chapter, Landrum-Griffin established reporting and disclosure requirements for union finances, specified the rights of individual union members, and regulated how union leaders could represent their members' interests.

Nonetheless, although many firms adopted a hard line in bargaining, collective bargaining continued in many sectors of the American economy in the 1950s. Only a few firms began to experiment with an alternative—a new form of nonunion human resource management. However, this alternative did not spread until the turbulent 1960s.

The 1960s: Rank-and-File Unrest

The 1960s were marked by both strong economic growth and social and political upheavals. These upheavals included the civil rights movement, urban riots, and wide-scale protests over continued expansion of the Vietnam War. The economic growth and the environment of protest fed employee militancy at the workplace. This was exemplified by a growing number of contract demands, **wildcat strikes** during the term of the contract, and rank-and-file rejections of contracts union leaders had negotiated.[35] At the same time, unions were beginning to organize large numbers of public sector workers.

The 1960s were years of great challenge to management and union leaders alike. In the private sector, the parties struggled to cope with pent-up pressures and conflicts at the workplace and in local unions. In the public sector, labor and management searched for principles to guide the extension of collective bargaining to this new terrain.

Meanwhile, stimulated by government research and development expenditures to support the effort to catch up with the Soviet Union in the space race, the demand for white-collar, technical, and managerial employees expanded rapidly. What later came to be known as the high technology industries were born and flourished.

These developments had two effects on collective bargaining. First, the power of personnel and human resource management professionals grew as they were charged with satisfying the needs of the expanding class of highly skilled employees. The role of human resource professionals was further expanded by passage of new government regulations that covered the workplace, such as equal employment opportunity laws. Second, the high-technology organizations developed novel human resource strategies and policies. As a result, unions found it very difficult to organize the expanding high-tech firms.

Because of these and other pressures, the late 1950s and early 1960s marked a turning point for union membership levels in the private sector. Since the early 1950s, growth in union membership has not kept pace with increases in the size of the labor force.

The 1970s: Stability and Atrophy

The 1970s may go down in American labor history as one of the least distinguished in the history of collective bargaining. As the economic pressures to change

collective bargaining intensified, labor and management continued to follow the patterns of behavior that had developed in the earlier years. Management became preoccupied with holding the line against any further union gains in bargaining, and labor leaders seemed to push no further, focusing instead of preserving the gains they or their predecessors had achieved in collective bargaining in previous decades.

Interest in issues such as productivity improvement and the quality of working life began to surface in labor-management discussions. But little more than isolated and limited experimentation in collective bargaining resulted.

Government policy makers were also stymied. A political stalemate emerged between labor and management, as evidenced by the failure of Congress and a Democratic president to pass labor law reforms in 1978.[36] No party—labor, management, or governmental—successfully initiated any bold advance in bargaining practice, yet each seemed quite effective in constraining the actions of the others. Despite pressures from mounting foreign competition and domestic competition from nonunionized companies, union workers' wages grew more rapidly throughout the 1970s than nonunion wages did.

During the 1970s, industrial relations professionals continued to emphasize the goals of labor peace and stability, while pressures for change continued to mount. In many corporations, labor relations professionals became more defensive and more isolated from other managers and their influence with top executives gradually began to erode. It was not until a dramatic shift in the environment took place in the early 1980s that mounting pressures suddenly propelled the parties into an era of fundamental change in collective bargaining.

The 1980s: Change and Concession Bargaining

The election of Ronald Reagan as president reflected a strong conservative shift in the political climate of the country. This shift was vividly illustrated early in Reagan's administration when he fired and permanently replaced air traffic controllers (members of the Professional Air Traffic Controllers Organization, PATCO) who had gone on strike in August 1981.

PATCO had been engaging in an illegal strike over the terms of a new collective bargaining contract. Although the president's actions were directed at employees of the federal government, those actions sent a strong message to employers that the labor movement had lost much of its political power and the support of the public. The firing of striking controllers and the demise of PATCO solidified the resolve of employers to seize the initiative in collective bargaining.

The deep economic recession of 1981–1983 further mobilized many employers to sidestep or even abolish collective bargaining. The increase in the value of the U.S. dollar against foreign currencies further reduced the competitiveness of U.S. producers operating in foreign markets. Massive layoffs in key, highly unionized sectors resulted that reached deep into union ranks and thereby cut off the unions' primary source of bargaining power. Plant closings and mass layoffs spread to the point that some analysts argued that a deindustrialization of America was under

way. Thus began the era of **concessionary bargaining,** when unions agreed to wage cuts or freezes or in other ways gave previous gains back to employers. The combination of union concessions and other factors led to particularly difficult times for poorly educated workers, and this contributed to a growing inequality in the **distribution of income** in the United States.

The rate of decline in union membership not only continued during the 1980s, it accelerated. In 1985, the labor movement publicly acknowledged the depth of its membership crisis and called on its leaders to consider a variety of new strategies.[37]

At the same time, new forms of employee participation and new concepts of how to organize work appeared in some workplaces. Thus, on the one hand, unions were negotiating concessionary agreements and losing members. On the other hand, some of the concessionary contracts included gains that gave employees employment security or direct participation in business decisions. Employers were taking things away from unions while at the same time offering unions some of the very things they had always wanted. By the late 1980s, better times had appeared in some manufacturing industries, such as autos and aerospace, and elements of traditional collective bargaining including pattern bargaining began to reappear.

Although these contradictory pressures did not hit all bargaining relationships with equal force, their cumulative effects posed fundamental challenges to the basic principles that underlay the New Deal labor relations system. Changes were occurring at all three levels of the traditional bargaining system.

At the workplace level, unions were challenged by new forms of worker and union participation and by more direct communication between workers and management. At the middle level of labor relations, unions were making major concessions to their traditional wage settlements and to **work rules** (such as fewer job classifications). Meanwhile, substantial changes at the strategic level were also occurring that often involved greater union involvement in strategic business issues.

The nature and extent of these changes varied considerably across the range of bargaining relationships in different industries and firms. They were by no means universal, and they may not prove to be lasting features of collective bargaining. But the new practices were in use in enough bargaining relationships to lead many American managers and unionists to discuss whether these new practices were superior to traditional collective bargaining.

Thus, the 1980s proved to be a critical period of experimentation and new strategic choices for management, labor, and government decision makers. All three of these actors now had to decide which of the new ideas deserved to be encouraged and which of the traditional practices should be preserved.

The 1990s–2010: Income and Collective Bargaining Polarization

Even though the economy began experiencing an extremely strong recovery in the early 1990s, there was growing polarization in collective bargaining and in

the labor market experiences of American employees. In the early 1990s, corporate downsizing and reengineering led to layoffs and insecurity, particularly among middle managers and white-collar employees, who bore an uncharacteristically large share of these initiatives. Income bifurcation continued: employees who were highly educated were given large rewards (and top corporate management was given particularly large rewards), while poorly educated workers fared very badly as new technologies and heightened international competition spurred industrial changes.

Unions everywhere became concerned about employment security, and this concern helped spur the negotiation of modest pay increases, which in turn helped produce low rates of inflation and unemployment in this period. Meanwhile, labor-management relations also became more polarized. At some firms, unions and management deepened a participatory style of interaction that included team forms of work organization and union involvement in business issues. On the other end of the spectrum were highly conflictual relationships such as those at the Caterpillar Corporation, where bitter strikes involved the use of permanent replacements for strikers and **union decertification**.

Because of the relatively strong role that market forces have played in American economy history, the United States has long been noted for a high degree of diversity in the conditions under which employees work. Yet in recent years the amount of labor market diversity has increased markedly, spurred in part by the fact that share of the labor force represented by unions continues to decline. The nonunion sector continued to grow in the private sector as management aggressively resisted union organization and took advantage of new technologies and relatively lax enforcement of the nation's labor laws to move work within or outside the country or relied on outsourcing or "contingent labor" to meet competitive pressures and union organizing efforts. Unions struggled to battle back with a renewed emphasis on organizing and with new leaders at the head of the AFL-CIO.

In the late 1990s and at the start of the new millennium, bifurcation in the U.S. labor market was increased by the hypermobility of computer programmers and related professional employees who moved relatively easily across firms, in part to take advantage of attractive stock-option offers. Highly skilled employees gained substantial individual bargaining power in this period, and this led to significant increases in their earnings. Given the continuing presence of a large low-wage sector in the U.S. labor market, these pressures led to further income bifurcation. Yet even high-tech professionals faced increased uncertainty as periodic bursts in the tech bubble led to job security concerns and declines in interfirm mobility for skilled professionals.

Debates on the virtues of the market-driven U.S. economic system shifted during the financial crisis of 2007–2008, which led to a prolonged a deep economic slump. Criticisms surfaced about whether the market- and financially oriented U.S. economic system gave too much authority to corporate owners and top executives and provided too limited a role to representatives of the public and employees.

2010 to the Present: A Broadening of Rights and Representation Campaigns

Faced with a growing nonunion sector, the American labor movement increased the intensity of its efforts to revitalize. Union organizers increasingly were being elected to leadership positions in national unions (including the presidency in some cases). National unions and the AFL-CIO began to spend significant funds on organizing, and innovative organizing tactics, including efforts to organize on a community or regional basis, spread. Debates in the labor movement led some national unions to withdraw from the AFL-CIO and create a rival union confederation, the Change to Win coalition. Some unions began to make greater use of a triangular agenda that linked organizing, politics, and collective bargaining. While some unions found innovative ways to gain bargaining leverage, other unions struggled in the face of declining bargaining power.

Many collective bodies became increasingly active on income and related rights issues from 2010 on. The resulting rights campaigns included efforts to introduce a living wage and immigrant rights initiatives. These campaigns often drew support from religious groups and other community-based organizations, and in some cases unions joined these campaigns as active partners.

The tenor of recent U.S. collective bargaining has varied widely. In some firms, heightened conflict has appeared, while in others extensive partnerships have been forged. While some workers suffered greatly as management took advantage of the power globalization and the growth in the number of nonunion workers gave them, unions in some other firms used innovative bargaining or the traditional leverage of the strike to make gains.

Benefit issues emerged as a key topic for collective bargaining in the 2000s. Because most working age individuals and retirees under 65 years of age receive health insurance through employer-provided plans in the United States, health insurance is a major labor cost item for many employers. The rapid growth of health care costs has put increasing pressure on employer cost structures. Employers have tried to control cost increases by requiring employees and retirees to pay larger portions of premiums, reducing benefits, and increasing co-pays. Although employers could make these changes unilaterally with nonunion employees, employers' attempts to negotiate similar measures for unionized employees often produced major tensions in collective bargaining.

Retirement benefits were also a major issue in collective bargaining, particularly in industries such as autos and steel that had sizable legacy expenses for their retirees that date from earlier decades when they supported much larger work forces. For example, in the auto industry, the efforts of General Motors to lower its health care costs for retirees led to a major strike in 2007 and eventually led to an agreement whereby General Motors, Ford, and Chrysler transferred their health insurance obligations for retirees to a union-run voluntary employee benefit association (VEBA).

The growth of international trade and multinational corporations extended markets internationally and challenged the international labor movement to forge cross-national unionism. Although some American unions took steps in

this direction, they faced persistent barriers. Meanwhile, a variety of organizations and activities seeking to protect labor rights in countries with transitioning economies were spurred by concerns about the effects of globalization. Their activities included anti-sweatshop campaigns on university campuses and fair trade initiatives.

Summary

The history of the labor movement this chapter traces reveals that developments in collective bargaining cannot always be accurately predicted by extrapolating from previous patterns of behavior. For example, events in the 1920s did not anticipate the arrival of industrial unionism and the enactment of the New Deal model in the 1930s. Status quo bargaining in the 1970s was followed by the fundamental changes to the New Deal system from the early 1980s on. Then, in the new millennium, a diverse array of union revitalization efforts developed that were complemented by a broadening of various rights campaigns (e.g., for a living wage) and groups such as NGOs that pushed for fairer employment outcomes in the United States.

The lesson is clear. Relations between labor and management are highly dynamic and adapt over time to changes in the external environment and the desires of the participants. It is also clear that collective bargaining did not gain acceptance in American society until the country was in the midst of the Great Depression and then only as part of a larger set of economic and social reforms.

The attitudes of labor and management toward unions have continued to change in recent years in response, in part, to changes in environmental pressures. To understand the operation of collective bargaining, it is necessary to explore how forces in the external environment interact with the strategies and structures of labor and management. American labor history reveals the critical influence of labor law and public policy on the evolution of collective bargaining. Chapter 3 focuses on the evolution of American labor law and Chapter 4 examines other environmental influences on labor relations.

Discussion Questions

1. Briefly explain John Commons's theory about why workers joined unions in the early 1900s.
2. Discuss the legal reaction to unionization before the NLRA (1935).
3. Compare the drive system with scientific management.
4. Identify the national unions that emerged in the United States in the nineteenth century and compare their basic goals.
5. What was the impact of the NLRA after the Supreme Court held that it was constitutional?
6. Outline the key eras that appeared in collective bargaining in the United States after World War II.

Related Websites

AFL-CIO:
http://www.aflcio.org

United Automobile Workers (UAW):
https://uaw.org/about/more-information

Industrial Workers of the World (IWW):
http://www.iww.org/content/about-iww

Suggested Supplemental Readings

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Notes

1. Quoted from Henry Pelling, *American Labor* (Chicago: University of Chicago Press, 1960), 4.
2. Ibid., p. 12.
3. Thomas Brooks, *Toil and Trouble* (Chicago: University of Chicago Press, 1971), 2.
4. Ibid., 4.
5. Herbert Gutman, *Work, Culture, and Society in Industrializing America* (New York: Alfred A. Knopf, 1975).
6. Neil W. Chamberlain and James W. Kuhn, *Collective Bargaining*, 3rd ed. (New York: McGraw-Hill, 1986), 6.
7. John R. Commons, "American Shoemakers, 1648–1895," in Commons, *Labor and Administration* (New York: Macmillan Co., 1913), 210–264. Marxists and institutionalists differed deeply on the issue of what early unions and workers wanted. Marxists claimed that unionism entailed an effort by workers to regain control over the production process. Institutionalists argued that workers and unions were primarily oriented (at least in the United States) toward improving workers' income and work conditions.
8. Sanford M. Jacoby, "The Duration of Indefinite Employment Contracts in the United States and England: An Historical Analysis," *Comparative Labor Law* 5 (Winter 1982): 85–128.
9. For a thorough historical analysis of labor developments during this period, see Joseph G. Rayback, *A History of American Labor* (New York: The Free Press, 1966), 75–92.
10. Brooks, *Toil and Trouble*, 28.
11. For a good concise summary of *Commonwealth v. Hunt* and other legal doctrines in American labor history, see William B. Gould, *A Primer on American Labor Law* (Cambridge, Mass.: MIT Press, 1986).
12. Rayback, *A History of American Labor*, 166–168.
13. Ibid., 196–197.
14. Ibid., 200–207.
15. Lloyd Ulman, *The Rise of the National Trade Union* (Cambridge, Mass.: Harvard University Press, 1958).

16. Rayback, *A History of American Labor*, 142–165.
17. Ibid., 162.
18. Ibid., 238–249.
19. Ibid., 248.
20. Samuel Gompers, *Seventy Years of Life and Labor: An Autobiography*, ed. Nick Salvatore (Ithaca, N.Y.: ILR Press, 1984).
21. Sanford Jacoby, ed., *Masters to Managers* (New York: Columbia University Press, 1990).
22. For a good discussion of the drive system and other aspects of American management, see ibid.
23. In 1890, there were an estimated 90,000 foremen in American industry. By 1900 their numbers had increased to 360,000. Robert Reich, *The Next American Frontier* (New York: Bantam, 1983).
24. Progressive personnel policies did not spread to many small firms or to industries such as railroads and mining. See Sanford M. Jacoby, *Employing Bureaucracy* (New York: Columbia University Press, 1985).
25. Ibid., 224.
26. *NLRA v. Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937).
27. Irving Bernstein, *The Lean Years* (New York: Houghton Mifflin, 1972).
28. For a discussion of the origins of this principle, see Robert F. Hoxie, *Trade Unionism in the United States* (New York: Appleton and Company, 1920).
29. Jacoby, *Employing Bureaucracy*, 243–253.
30. See War Labor Board, *Termination Report of the War Labor Board* (Washington, D.C.: Government Printing Office, 1946).
31. George W. Taylor, *Government Regulation of Industrial Relations* (New York: Prentice Hall, 1948), 1.
32. James N. Baron, Frank R. Dobbin, and P. Devereaux Jennings, "War and Peace: The Evolution of Modern Personnel Administration in U.S. Industry," *American Journal of Sociology* 92 (September 1986): 350–384.
33. For a description of these provisions, see the U.S. Department of Labor, Bureau of Labor Statistics series of publications called "Characteristics of Major Collective Bargaining Agreements" (Washington, D.C.: Bureau of Labor Statistics, 1979). See also *Basic Patterns in Union Contracts* (Washington, DC: Bureau of National Affairs, 1984).
34. Herbert N. Northrup, *Boulwarism* (Ann Arbor: Graduate School of Business, University of Michigan, 1964).
35. William E. Simkin, "Refusal to Ratify Contracts," in *Trade Union Government and Administration*, ed. Joel Seidman (New York: Praeger, 1970), 107–148.
36. D. Quinn Mills, "Flawed Victory in Labor Law Reform," *Harvard Business Review* 52 (May–June 1979): 99–102.
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3 The Law and Legal Systems

THE ROLE AND IMPORTANCE OF THE LAW AND LEGAL SYSTEMS

This chapter examines how the law and legal systems influence labor relations. The law is a primary mechanism through which the government affects and regulates the conduct of labor relations. We focus on both labor law, which regulates unions and collective bargaining, and employment law, which regulates individual employment contracts and establishes employment standards.

Labor law is important for regulating the process of union formation and for establishing collective negotiation, which is referred to as the constitutive function of labor law, and for regulating and influencing the **relative bargaining power** of the parties, which is referred to as the power broker function of labor law. Similarly, employment law has a constitutive function in that it determines questions such as "who is an employee?" and a power broker function in that it influences wages and other terms and conditions of employment through provisions such as the minimum wage. In this chapter, we will examine both the constitutive and the power broker functions of labor and employment law.

We begin by discussing the background of constitutional law in the United States, then examine labor law and employment law in greater detail. In recent decades, international labor law has become increasingly prominent in labor relations, and we will conclude with a discussion of the development of international labor laws.

CONSTITUTIONAL LAW

The U.S. Constitution establishes the basic structure of the government and enumerates both its powers and the limits of those powers. **Constitutional law** issues typically focus on questions such as election processes, the powers granted to different parts of the government, and the rights of individual citizens. For labor relations, this may include questions of which branch or level (state or

federal) of government has the power to regulate labor relations and the rights of individual workers, especially public employees, in relation to the government.

In contrast to the United States, where the Constitution's application to labor relations is limited, some countries, particularly those with systems based in civil law, go farther in this area and embed more social rights, which may include basic principles of labor law, in their national constitution. An example of including positive social rights in a national constitution is Article 123 of the Mexican Constitution, which provides a positive right to employment:

> Every person has the right to dignified and socially useful work. To achieve this, the creation of jobs and social organization will be promoted conforming to the law.

This broad right to employment in Article 123 is followed by a series of more detailed provisions concerning issues such as protections against unfair dismissal, minimum wages, and the right to organize unions. These provisions are important for labor relations throughout the Mexican economy because the Mexican Constitution applies to private actors, not just to the public sector.

In contrast, in the United States, the provisions of the Constitution typically apply only to the government and other public sector actors. This sharply limits the relevance of constitutional law for private sector labor relations. In the United States, constitutional issues in labor relations mostly arise in the context of public employees. Since public employers are government actors, they are bound by the limitations established in the Bill of Rights. For example, public employees have constitutionally protected rights to free speech and against unreasonable searches of their person or property. These constitutional protections do not apply to employees of private sector employers.

LABOR LAW

Historical Development of U.S. Labor Law

Labor laws have changed dramatically over the course of U.S. history, reflecting shifting government policies regarding labor unions and the regulation of the economy. A timeline of some major developments in U.S. labor policy is outlined in Table 3.1.

Nineteenth-Century Labor Law

In the United States, the earliest public policy statements about the legality of union formation and activity appeared in the decisions of state courts. From 1800 to 1890, state courts relied on principles of common law that had been developed by judges to regulate the conduct of unions and employers rather than laws enacted by legislatures. The first landmark case among these decisions was the Philadelphia **Cordwainers' case** (*Commonwealth v. Pullis*, 1806), in which the court ruled that efforts by unions or other combinations of workers to raise wages were intrinsically illegal. In other words, the courts viewed unions as a form of criminal conspiracy.

Table 3.1 Overview of major developments in U.S. labor policy

Date	*Event*	*Decision or Ruling*
1806	*Commonwealth v. Pullis* (the Cordwainers' case)	A Philadelphia court rules that a combination of workers seeking a wage increase is a criminal conspiracy.
1842	*Commonwealth v. Hunt*	A Massachusetts court rules that unions are lawful and that combinations of workers are legal as long as they use lawful means to gain lawful ends.
1890	Sherman Antitrust Act	A federal law states that "every combination . . . or conspiracy in restraint of trade or commerce among the several states . . . is hereby declared to be illegal." Used by employers seeking court injunctions to stop union activity.
1894	Pullman Strike	A federal court issues an injunction against striking members of the American Railway Union. Eugene V. Debs is jailed for refusing to obey a court order to return to work. President Cleveland uses the army to enforce the injunction and break the strike.
1906	*Loewe v. Lawlor* (Danbury Hatters' case)	The U.S. Supreme Court rules that union boycotts of goods violate the Sherman Antitrust Act. The United Hatters of North America is assessed for damages that are then tripled under the Sherman Act.
1914	Clayton Antitrust Act	A federal law states that "the labor of a human being is not a commodity or article of commerce." However, the courts continue to rule that union actions are illegal.
1926	Railway Labor Act	A federal law states that railway workers are allowed to organize and bargain collectively. The National Mediation Board, formed in 1934, enforces the provisions of this act.
1932	Norris-LaGuardia Act	A federal law bans yellow-dog contracts and bars federal courts from issuing injunctions against unions in nonviolent labor disputes.
1933	National Industrial Recovery Act (NIRA)	A federal law gives workers the "right to organize and bargain collectively through representatives of their own choosing . . . free from interference, restraint, or coercion of employers."
1935	*Schechter Poultry Co. v. United States*	The Supreme Court rules that the NIRA is unconstitutional.
1935	National Labor Relations Act (NLRA) (Wagner Act)	A federal law states that workers have the right to organize and establishes unfair (employer) labor practices. The act also creates the National Labor Relations Board (NLRB).
1935	Social Security Act	A federal law establishes federal programs that administer old age insurance, survivors' insurance, disability insurance, health insurance and old age assistance.

Table 3.1 *Continued.*

Date	*Event*	*Decision or Ruling*
1937	*National Labor Relations Board v. Jones & Laughlin Steel Company*	The Supreme Court rules that the NLRA is constitutional.
1938	Fair Labor Standards Act	A federal law regulates maximum hours of work, stipulates overtime pay, and sets a minimum wage.
1947	Labor Management Relations Act (Taft-Hartley Act)	A federal law amends the NLRA by creating a list of union unfair labor practices. Prohibits wildcat strikes, secondary boycotts, and closed shops, among other things. Still in effect.
1959	Labor Management Reporting and Disclosure Act (Landrum-Griffin Act)	A federal law establishes a bill of rights for union members that guarantees freedom of speech and the right to hold secret elections. Requires unions to submit annual financial statements to the Department of Labor. Lists guidelines for trusteeships and elections.
1962	Executive Order 10988	President Kennedy gives federal employees the right to engage in collective bargaining. President Nixon expands the rights of federal workers in 1970 with Executive Order 11491. State laws follow suit, giving employees of local and state governments the right to bargain.
1964	Civil Rights Act, Title VII	A federal law states that it is unlawful for an employer or a union to discriminate on the basis of race, color, religion, sex, or national origin.
1967	Age Discrimination in Employment Act	A federal law states that it is unlawful to discriminate against workers over the age of 40 in hiring, promotion, and compensation decisions or in conditions of work.
1970	Occupational Safety and Health Act (OSHA)	A federal law establishes standards for the safety and health of federal workers and workers in the private sector. Establishes the Occupational Safety and Health Administration.
1974	Employee Retirement Income Security Act (ERISA)	Establishes minimum standards for employee benefit plans, including pensions and employee welfare (health) plans. Applies to employers of private sector workers.
1978	Civil Service Reform Act	A federal law establishes the Federal Labor Relations Authority (FLRA), which oversees and regulates labor relations in the federal government.
1989	Worker Adjustment and Retraining Notification (WARN) Act	A federal law requires employers to provide advance notice to employees who will be affected by a plant closing or a mass layoff.
1990	Americans with Disabilities Act (ADA)	A federal law makes it illegal for an employer to discriminate against a qualified individual with a disability. Requires employers to make reasonable accommodations to allow an individual with any mental or physical impairment to apply for or sustain an employment opportunity.

Table 3.1 *Continued.*

Date	*Event*	*Decision or Ruling*
1991	Civil Rights Act	A federal law amends Title VII of the Civil Rights Act of 1964 to reverse a number of the conservative court decisions made in the 1980s and to allow employees to sue employers for compensatory and punitive damages.
1993	Family and Medical Leave Act (FMLA)	A federal law requires employers with 50 or more employees to grant up to 12 weeks of unpaid leave per year to employees who are unable to perform their job duties because of a serious health condition, the birth of a child, or the need to care for ill family members.
2016	Fight for 15 campaigns	Following a nationwide campaign, two states, California and New York, adopt laws that phase in a $15 an hour minimum wage over a period of several years.

The conspiracy doctrine changed after the 1842 Massachusetts decision in *Commonwealth v. Hunt*, in which the court distinguished between legal and illegal means for achieving unions' ends. The court ruled that unions had a right to exist, but it prohibited them from using coercive pressures to achieve their goals.

Throughout the 1800s, the courts viewed unions with hostility and suspicion. They had trouble fitting the idea of unions and collective activity into a constitutional system and a political ideology that emphasized individual action and freedom of contract, property rights, and laissez-faire capitalism. As a result, in the nineteenth century, the ability of workers to engage in collective action in pursuit of their goals was severely limited. In addition, the void in statutes meant that legal challenges to union action were largely confined to local or state courts; there was little or no federal involvement in labor relations through statutes enacted by Congress during this time.

Antitrust Laws

When federal statutes were enacted that applied to unions, unions initially fared poorly. With application of the federal Sherman Antitrust Act, for example, unions found themselves being treated like any other commodity or factor of production. That is, the courts viewed unions as labor market monopolies to be limited, just as other combinations or conspiracies that aimed to restrict free trade in product markets were limited.

In the 1800s and early 1900s, whether through implementation of the conspiracy doctrine or the Sherman Antitrust Act, courts used labor injunctions to discourage strikes and other forms of union pressure against employers. With a labor injunction, a court could rule illegal a union action, such as a strike, and impose penalties, such as jail, on individuals who defied court orders. In many ways, injunctions were more punishing than other court actions were. Employers could gain

injunctions against union actions quickly and injunctions could prohibit unions from using strikes, the primary source of labor's bargaining power.

An additional tool employers used to weaken unions in the nineteenth century was the willingness of the courts to enforce yellow-dog contracts. When a prospective employee signed such a contract, which employers could legally require, he or she agreed not to join a union while working for the employer. If the prospective employee refused to sign the yellow-dog contract, the employer would not offer a job. Courts went so far as to order injunctions against unions that sought to recruit employees who had signed yellow-dog contracts as members, on the principle that this was an illegal interference with contract.

Unions and union supporters lobbied hard for an end to labor injunctions. Finally, in 1914, the Clayton Act was passed, which famously stated that "labor is not a commodity." Unions hoped that distinguishing labor from other commodities that were regulated by the Sherman Antitrust Act would give labor unions immunity from the provisions of that act and lead to an end to labor injunctions. However, union hopes were not realized: federal courts subsequently interpreted the Clayton Act narrowly and state courts continued to issue injunctions against union actions. Meaningful protection of union activities did not come until the passage of federal legislation that granted unions the rights to exist and to strike.

Twentieth-Century Labor Laws

Legal and public policy opposition to the formation of unions began to erode in the early twentieth century. First, the **Lloyd-La Follette Act** of 1912 gave postal employees the right to organize. Then, during World War I, the War Labor Board adopted a policy statement that supported the right of private sector workers to organize into unions and to bargain collectively. Wartime production needs meant that it was crucial that disruptive strikes be avoided. Because of this, during World War I, employers agreed not to break the unions that already existed, setting the stage for a greater acceptance of unionization in later decades.

The Railway Labor Act. In the 1920s, spurred by previous labor strife in the railroad industry, President Calvin Coolidge urged the railroad companies and unions to develop procedures that would bring about industrial stability. In 1926, Congress passed the **Railway Labor Act**, which closely followed proposals that labor and management had recommended in the industry. The act specified that employees had the right to organize unions without interference from employers and the right to bargain collectively through representatives of their own choosing. Railroad employers were obligated by the law to negotiate with the collective bargaining representatives that workers had selected. The chief purpose of the law was to establish a variety of procedures designed to reduce conflict in the railroads.[1]

Given the previous resistance to collective bargaining and unionism the courts had expressed, the constitutionality of the Railway Labor Act was in question until the U.S. Supreme Court made a key ruling. In ***Texas and New Orleans***

Railroad Company v. Brotherhood of Railway and Steamship Clerks (1930), the railroad company argued that the act impinged on its First and Fifth Amendment rights, which the company argued gave it control over the selection and discharge of employees. The Supreme Court rejected these arguments and upheld the constitutionality of the Railway Labor Act. The Court stated that Congress had the right to become involved in labor relations in the railroad industry because of its interest in maintaining the flow of interstate commerce. It also ruled that promoting collective bargaining was in the "highest public interest" because it would prevent "the interruption of interstate commerce by labor disputes and strikes." For the first time, the U.S. Supreme Court had recognized the authority of the government to protect the right of workers to organize into unions and to bargain collectively.

The Norris-LaGuardia Act. Although the Railway Labor Act's endorsement of collective bargaining was pathbreaking, its effects on labor and management were limited by the fact that the act initially applied only to the railroad industry. In 1932, Congress provided an even stronger endorsement of collective bargaining with the Norris-LaGuardia Act.

The Norris-LaGuardia Act allowed private sector employees "full freedom of association, self-organization, and designation of representatives of (their) own choosing, to negotiate the terms and conditions of employment." The greatest practical impact of the act was the restraints it imposed on the issuance of labor injunctions. This earned the act the alternative name that is frequently used, the Federal Anti-Injunction Act. One other important provision of the act outlawed yellow-dog contracts.

Congress justified the Norris-LaGuardia Act by pointing to the need for collective bargaining in modern society. Sections of the act state that under prevailing economic conditions, the unorganized worker was at a disadvantage when confronted by the power of large modern corporations. To redress this imbalance, the act endorsed collective bargaining and limited the power of the courts to intervene in labor disputes. The Norris-LaGuardia Act was debated and passed when the U.S. economy was in the midst of the Great Depression; these were the circumstances under which Congress came to endorse collective bargaining.

It is noteworthy that the Norris-LaGuardia Act did not grant unions any new legal rights; it merely allowed them greater freedom to act by reducing interference from the courts.

The National Industrial Recovery Act. After the election of Franklin Roosevelt as president of the United States in 1932, the federal government took steps to promote industrial recovery from the depression. A key part of the federal government's plan to promote recovery was the National Industrial Recovery Act (NIRA), which passed in 1933. The law stated that businesspeople across various industries could form groups and pass codes, a system of principles and rules that would stipulate business plans and regulate prices. The hope was that collusion

between businesses and the regulation of production and prices would stimulate output and thus stimulate the economy. Congress stipulated that each of these business codes would include a minimum wage for the workers covered by the code. Promoters of this feature of the act argued that higher minimum wages would stimulate the economy by increasing the purchasing power of workers.

The most significant clause in the NIRA for unions was Section 7(a), which protected the right of workers to bargain collectively. As with minimum wages, the rationale for promoting collective bargaining was that it would elevate the purchasing power of workers and thus stimulate the national economy and help bring the country out of the Depression.

Section 7(a) contained two key principles: (1) that employees had the "right to organize and bargain collectively through representatives of their own choosing, and shall be free from interference, restraint, or coercion" from employers in the exercise of those rights; and (2) that no employee could be required to join a company-dominated union as a condition of employment.

While the NIRA had important symbolic effects, its direct effects were limited because the U.S. Supreme Court ruled it unconstitutional in 1935. The Court ruled that the law illegally delegated power to the executive branch and exceeded Congress's authority to regulate interstate commerce. Nevertheless, during the period when the NIRA was in effect (1933–1935), union membership increased from 2.9 to 3.9 million.

The National Labor Relations Act. The most significant boost for unionism in the private sector of the U.S. economy came with passage of the National Labor Relations Act (NLRA) in 1935. The NLRA (often referred to as the Wagner Act after its chief sponsor, Senator Robert Wagner) made unions and union activity (including strikes) legal in the private sector. It did much more than that. As the act's preamble stated, the purpose of the NLRA was to promote the orderly and peaceful recognition of unions and the use of collective bargaining as a means for establishing the terms and conditions of employment.

The NLRA was later amended. The Taft-Hartley amendments of 1947 added a list of **unfair labor practices of unions** and turned the NLRA into a detailed and comprehensive code of conduct for collective bargaining. The Landrum-Griffin amendments of 1959 added provisions that governed internal union affairs and sought to define the rights of union members vis-à-vis their union organizations and leaders.

The NLRA, as amended, continues to be the principle law that governs labor relations in the private sector. The importance of the NLRA can be conveyed through the following exercise. Before you began taking this course, how many of you knew that our current federal labor law not only says that unions are legal but actually states a preference for collective bargaining? Given the active resistance of employers to unions that prevails in our economy and the low esteem with which many in the public view unions, we would guess that this would be a surprise, if not a shock, to most Americans. We return to this inconsistency between the language of the NLRA and current attitudes later in this chapter

and elsewhere in this book. For now, we only note it as a strange irony of U.S. public policy and practice.

The Taft-Hartley Act. By the end of World War II, labor unions had grown in strength and membership. The strike wave that occurred after the war stimulated hostility toward unions. Congress responded by passing the **Labor-Management Relations Act** (often referred to as the **Taft-Hartley amendments**) in 1947, overriding the veto of President Truman. The primary purpose of the act was to shift the balance of power more toward management and grant individuals more rights in their dealings with labor unions.

The major provisions of the act included the following:

1. It recognized the right of employees not to engage in union activities.
2. It added a list of unfair labor practices that unions could not commit.
3. It allowed workers to decertify their unions by a majority vote.
4. It allowed employers to make anti-union statements during union organizing campaigns as long as they did not include threats of reprisals or promises of benefits.
5. It prohibited unions from engaging in representation strikes to try to pressure an employer to accept union representation. (Representation strikes had been a major union organizing tactic in the 1930s).
6. It excluded supervisors from coverage under the NLRA.
7. It outlawed closed shops (which require an individual to be a union member before he or she can be hired).
8. It allowed states to pass laws outlawing the **union shop**, which require an individual to become a union member after he or she is hired (these are also known as right-to-work laws).
9. It added procedures for **national emergency disputes**.

Although the NLRA still stated that its purpose was to encourage and promote collective bargaining, the Taft-Hartley Act strengthened employer interests in labor law and weakened union interests.

The Landrum-Griffin Amendments. The **Labor-Management Reporting and Disclosure Act** of 1959, commonly referred to as the Landrum-Griffin amendments, is primarily concerned with the internal practices of unions. The major purpose of these amendments to the NLRA is to protect union members from improper union conduct. The law also seeks to eliminate arrangements between unions and employers that deprive union members of proper union representation.

Landrum-Griffin passed Congress in the aftermath of a series of well-publicized hearings on union corruption that were conducted by the Senate Select Committee on Improper Activities in Labor and Management (also known as the McClellan Committee). Much of the committee's attention focused on the activities of the International Brotherhood of Teamsters. This led to the expulsion of the Teamsters union from the AFL-CIO.

Landrum-Griffin imposes requirements and obligations on unions that go far beyond those imposed on corporations and other organizations. As a result, the internal operation and affairs of unions are under special scrutiny and unions do not have the independence that other private organizations do.

Public Sector Labor Laws. The NLRA covers private sector employment relationships. Initially, collective bargaining was seen as incompatible with the role of public sector employees as public servants and with the sovereign power of government. However, views on this issue began to change after World War II. During the 1960s and 1970s, many states passed labor laws that extended the right to engage in collective bargaining to state and local government employees. In addition, in 1962, **Executive Order 10988** extended collective bargaining rights to federal employees. The Civil Service Reform Act of 1978 established a new Federal Labor Relations Authority (FLRA) to oversee and regulate the conduct of collective bargaining in the federal sector. A few states have extended bargaining rights to farm workers. Most of these state laws are modeled on the principles set forth in the NLRA, but they differ considerably in the procedures specified for implementing the principles. We will examine these public sector labor laws in greater detail in Chapter 13.

What the NLRA Does

The NLRA, as amended by the Taft-Hartley Act and the Landrum-Griffin amendments, is the statute that governs the labor relations of most U.S. workers in the private sector. Unions and management must operate within the rules and structure it establishes.

All labor law systems perform two generic functions. Katherine Stone has described these as the **constitutive function** and the **power broker function** of labor law.[2] In its constitutive function, labor law provides the rules for organizing unions and establishing collective bargaining. This includes rules about union membership and the regulation of internal union activities and the obligations of employers to recognize union representation for purposes of collective negotiations. In its power broker function, labor law establishes rules for the conduct of collective negotiations and the regulation of industrial conflict that influence the relative bargaining power of the parties. This includes rules about the use of strikes, lockouts and other economic weapons by the parties and provisions for government intervention to help resolve labor disputes. How labor law performs each of these two functions is an important factor that influences the status of unions and the relative bargaining power of workers.

The Constitutive Function of the NLRA

The starting point for the constitutive function of the NLRA is its Section 7 provision, which recognizes the right of workers to organize and to engage in concerted activity for mutual aid and protection. Concerted activity means activity by workers acting collectively. This can include both formal union organizing drives and informal worker protests in the workplace. It is important to note that

Section 7 protections apply to all employees and do not depend on union membership. So even in a workplace where no employees are union members or there is no union organizing activity, the employer can still be held to have violated Section 7 rights if it takes negative actions against employees who are engaged in a collective protest in the workplace.

The general right to self-organize and engage in concerted activity that Section 7 establishes is given life by the set of specific unfair labor practices listed in Section 8 of the NLRA. If an employer or a union engages in one of the behaviors listed in Section 8, it is said to have committed an unfair labor practice and may be subject to sanctions by the **National Labor Relations Board** (NLRB). In the context of union organizing drives, the most common unfair labor practices are violations of Section 8(a)(1), which makes it illegal for employers "to interfere with, restrain, or coerce" employees in their exercise of Section 7 rights, and Section 8(a)(3), which forbids discrimination in hiring or any term or condition of employment intended to discourage or encourage union membership.

The NLRA creates a specific structure through which union organizing and legal recognition occurs. The key to this structure is a system of representation elections to determine whether a majority of employees in the workplace want to be represented by the union. A group of employees seeking union representation initiates the process by filing a petition with the NLRB requesting that a representation election be held. Under Section 9(e) of the NLRA, 30 percent of the employees in the proposed bargaining unit must have signed the petition for an election to be held. If a majority of the employees voting in the election support the union, the NLRB certifies that union as the legal bargaining representative of the unit. If a majority of the employees vote against union representation, the unit is not represented by the union.

Note that under the NLRA, legal rights to union representation are determined collectively, not individually. If a majority support the union, then it is the legal representative of everyone in the bargaining unit, whether they are union members or not. Conversely, if a majority are opposed to the union, then no one in the unit is legally represented by the union for bargaining, even if they individually choose to be union members. This system, known as exclusive representation, is an important and distinctive feature of U.S. labor law. In most other countries, union membership is an individual rather than a collective choice. The result of exclusive representation is that unions gain important bargaining rights in the workplace if they have a successful organizing drive, but employers have a strong incentive to actively oppose union organizing drives. If the employer convinces a majority of the employees to vote against the union, it effectively prevents any union representation in its workplace, even for union supporters.

The structure of union organizing under the NLRA also makes the legal concept of the bargaining unit important in labor relations. When a union applies to the NLRB for a representation election, it applies to represent a specific bargaining unit of employees. For example, the union might ask to represent all non-managerial employees in a specific factory or all nurses who work at a specific hospital. When an election petition is filed, the NLRB determines whether the proposed unit is

an "appropriate bargaining unit." If the union is successful in the election, it gains the right to bargain on behalf of the bargaining unit in which the election was held. In this respect, the bargaining unit is the basic organizational unit in labor law, much like the corporation is the basic organizational unit in business law.

The Power Broker Function of the NLRA

In the power broker function, collective labor law regulates the use of economic weapons by the parties and influences the bargaining power of each party in collective negotiations. One of the most basic ways that labor law can influence the relative bargaining power of the parties is by placing a duty on them to engage in collective negotiations. Under the NLRA, a duty to **bargain in good faith** exists for both employers (section 8(a)(5)) and unions (section 8(b)(3)) once a union has won a representation election based on majority support of employees in a bargaining unit. The duty to bargain in good faith requires both union and management to meet and confer with an intent to negotiate a collective agreement. However, it does not require them to reach an agreement or to include any particular terms in that agreement. Parties are allowed to engage in hard bargaining; that is, to take strong positions that may or may not be acceptable to the other side. What they are not allowed to do is engage in surface bargaining, where they go through the motions of bargaining without any real intention of reaching an agreement.

Another way that collective labor law affects the relative bargaining power of the parties is by influencing who is covered by bargaining. In U.S. labor relations, unions often bargain on behalf of employees in individual workplaces. This is because the common structure of bargaining units consists of employees at a single establishment. These decentralized units often reduce the relative bargaining power of a union because they are able to exert less economic pressure on larger employers and are vulnerable to being forced into competition with employees of other establishments that may be nonunion and that may pay lower wages. By contrast, the more centralized bargaining systems found in most European countries, where bargaining occurs at an industry-wide or national level, increases the bargaining power of unions by increasing the threat of economic action by the union and reducing the danger of labor cost competition between different employers or establishments.

Labor law also influences bargaining power by regulating the parties' use of economic weapons. The NLRA protects a union's right to strike through its Section 7 right to engage in concerted activity for mutual aid and protection. In addition, Section 13 of the NLRA explicitly states that except as expressly provided, nothing in the statute "shall be construed as either to interfere with or impede or diminish in any way the right to strike." However, the act sets some specific limits on the right to strike. One of the most important of these, which was added in the Taft-Hartley Act, is a prohibition on secondary boycotts, where strike action is taken against an employer other than the one directly involved in collective bargaining. This limits the ability of unions to launch more widespread

economic actions in support of bargaining that could put pressure on business partners or allies of the primary employer involved in collective bargaining.

Although the NLRA includes strong recognition of the right to strike, the protections it establishes have been weakened by the Supreme Court's interpretations of the act. Most important, in its 1938 decision in *NLRB v. MacKay Radio*, the U.S. Supreme Court ruled that the National Labor Relations Act allowed employers to hire replacement workers so they could keep operating during a strike.[3] The Court said that when the strike is about economic issues, as is typically the case, an employer can offer permanent jobs to replacement workers. Although an employer is not allowed to fire employees for striking, it does not need to hire back workers who have gone on strike if their positions are occupied by permanent replacement workers, effectively taking away the jobs of the strikers. These permanent replacement workers can later vote in a decertification election to get rid of union representation. The ability to hire permanent replacement workers to defeat a strike and ultimately to undermine the union's representational status gives employers a powerful weapon that increases their bargaining power.

Enforcement of the NLRA

It is an old legal truism that without a remedy there is no right. This principle certainly holds true for labor law. To understand the impact of the NLRA on labor relations, it is necessary to consider the mechanisms for enforcing the provisions of the law and the penalties for violating it.

Unlike most laws, where an individual can go to court to make a legal claim, the NLRA establishes an administrative agency mechanism for enforcing the provisions of the statute. If an employee, a union, or an employer believes that a provision of the act has been violated, they can go to the National Labor Relations Board and file a complaint. The General Counsel's Office of the NLRB is responsible for investigating such complaints. If officials in that office decide the complaint has merit, they bring an unfair labor practice charge against the party it accuses of violating the act. Unfair labor practice is the term used to describe violations of the NLRA. The unfair labor practice charge is initially heard by an administrative law judge at one of the NLRB's regional offices. Because the General Counsel prosecutes the case, the complaining party does not have to hire their own lawyer to bring a case forward and the party being charged with the unfair labor practice has the opportunity to defend themselves against the charges. An administrative law judge will issue a decision on the case. The losing party then has the right to appeal the decision to the full National Labor Relations Board, a panel of five board members who meet in Washington, D.C., to decide these cases. Because the NLRB is the only mechanism for enforcing the provisions of the NLRA, parties cannot make claims of violations of the act through the courts. If the NLRB's General Counsel's Office declines to prosecute a complaint, it cannot proceed.

The NLRA provides the NLRB with the power to order specific remedies for unfair labor practices. When a worker has been fired in violation of the act,

the NLRB can order reinstatement and payment of lost wages. The NLRB can order an employer who has been found to have committed a unfair labor practice to cease and desist from its illegal actions and to post notices indicating that it has been found to have committed an unfair labor practice and informing workers of their rights. When the unfair labor practice involves a violation of the duty to bargain in good faith, the NLRB can issue an order that the parties resume bargaining and that negotiations be conducted in good faith. In extreme cases where unfair labor practices during a union organizing campaign make it impossible to hold a fair election, the NLRB can issue a Gissel bargaining order stating that the employer must bargain with the union even in the absence of a representation election.[4]

Although these remedies may seem substantial, they have come under increasing criticism for being relatively weak and ineffectual. For example, there are no provisions for punitive or compensatory damages beyond lost wages. Thus, an employee who has been terminated for union organizing activity will receive only the wages he or she should have received in the first place; there is no additional penalty against the employer for engaging in the illegal action. The NLRB's remedies are also relatively slow to enforce. If the employer does not accept the decision of an administrative law judge or the NLRB against it, there is no immediate penalty. Instead, the NLRB's General Counsel must go to court to get the decision turned into an enforceable court order. The result of these and other delays in the process is that it may be a year or more before there is any enforcement of the statute in cases where a unfair labor practice is found to have occurred. Critics argue that these delays and weak penalties make the act ineffective against an intransigent employer. Such employers can defeat a union-organizing campaign by committing unfair labor practices secure in the knowledge that only minimal penalties will be enforced and that that will happen long after the campaign has been defeated and the union has disappeared.

An area where the NLRA contains stronger remedial provisions concerns some strikes that violate the act. When an employer complains that a union has engaged in an illegal **recognition strike** or secondary boycott, the NLRB is required to expedite and give priority to the case and to seek an immediate court injunction preventing the strike under section 10(l) of the act. In contrast, while the NLRB has the power under section 10(j) of the act to seek court injunctions, this is not mandatory and there is no requirement that an injunction be expedited. Although this 10(j) injunction power has been used infrequently, in recent years a proposal has been discussed that would increase enforcement of the act by seeking more injunctions against employers engaged in unfair labor practices, for example seeking immediate reinstatement of workers who have been fired for attempting to organize a union.

One important recent issue in the enforcement of the NLRA is the issue of the extent to which it applies to undocumented migrant workers in the United States. The U.S. Supreme Court took up this issue in the case of *Hoffman Plastic Compounds v. NLRB*. The complainant in this case alleged that a large group of undocumented workers had been fired in violation of the NLRA for attempting

to organize a union.[5] A majority on the U.S. Supreme Court held that this action by the employer was an unfair labor practice despite the undocumented status of the workers on the basis that the labor laws applied to all employers and workers in the United States and did not include a limitation based on immigration status. However, this majority also held that since the workers did not have legal entitlement to work in the United States, they were not entitled to collect lost wages for being fired, since this would allow them to profit legally from their illegal employment status. Critics have argued that this focus on the status of the workers allows the employer to get away with violating the law without suffering any effective penalty.

Coverage of the NLRA

Workers must be covered by the NLRA to receive the protections of the act. One limitation in coverage of the act, which we have already mentioned, is that it only applies to private sector workers; different laws apply to public sector workers. Another limitation in coverage is that the NLRA does not apply to small businesses. To be covered by the act, employers must be engaged in interstate commerce, which has been broadly defined to include any company that has $50,000 or more of business with out-of-state entities. Any retail business with $500,000 of more of business volume annually is also covered.

Certain categories of employees are excluded from coverage by the NLRA. The act states that it does not apply to agricultural laborers or domestic servants. A large and growing category of exclusion is independent contractors; the act applies only to employees. Determinations of whether someone is an independent contractor are based on a legal test that considers a worker to be an employee if the employer controls the manner and means by which the work is performed. Although this legal test has a long history and origin in common law, in recent years many employers have attempted to classify workers as independent contractors, effectively removing from them the protections of labor and employment laws. This increasingly widespread classification of workers as independent contractors has been controversial and has produced growing legal conflicts over this issue. Among the most prominent are the conflicts surrounding the ride-sharing company Uber's classification of its drivers as independent contractors rather than employees, which has led to court cases challenging the company's policies.[6]

In addition to general exclusions from coverage by the act, the NLRA includes some specific limitations on the rights afforded to certain categories of employees.

The Taft-Hartley Act of 1947 excluded supervisors in the private sector from coverage under the NLRA. Section 2(11) of the act defines a supervisor as an employee who has authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees or to responsibly direct them, or to "adjust their grievances, or effectively to recommend such action, if…such authority is not a merely routine or clerical nature, but requires the use of independent judgment." Thus, a supervisor is defined in terms of the duties the employee performs and the power the employee

has to make key personnel management decisions or to exercise independent judgment. Although the law does not prevent supervisors from forming unions, it does not provide any legal protection for such activity.

The Taft-Hartley Act's exclusion of supervisors rested on the argument that if supervisors unionized, they would become less loyal to management and less committed to the goals of their employer. Some of the opposition to collective bargaining by supervisors reflects a belief that management deserves a set of loyal representatives of its own interests. The actual legislative rationale for this policy, however, rested on assumptions about the responsibilities supervisors had at the time Taft-Hartley was enacted.

Two questions are immediately obvious. First, are the roles and powers of today's supervisors still the same as they were assumed to be in 1947? Second, would the negative consequences the 1947 congressional majority predicted actually result if supervisors were given the same collective bargaining rights as other workers?

These questions have become the focal point of a debate over the rights of college faculty members to unionize and bargain. In a test case decided in 1980, the Supreme Court ruled that the faculty at New York City's Yeshiva University had managerial responsibilities and that this excluded them from coverage under the NLRA.[7] The Court reasoned that because the faculty members were involved in decisions about hiring, promotion, course assignment, and a variety of other managerial decisions that affected wages, hours, and working conditions, they fit the definition of supervisor as defined in law. Thus, Yeshiva University had no legal obligation to recognize a union of faculty members, and collective bargaining with faculty members at this university (and several others) ended.

Nurses are another group that has been subject of intense debates about potential supervisory status. Although the core of nurses' professional work consists of caring for patients, some nurses who possess advanced training (e.g., registered nurses) are frequently given additional authority to direct the work of nursing assistants and others with more limited training. The critical question becomes whether this leadership role in directing those who provide patient care puts these nurses in a supervisory position and hence makes them ineligible for the protections of the NLRA.

Public Policy Objectives of Labor Law

With the passage of the NLRA, the U.S. federal government became committed to promoting collective bargaining. Since this commitment is so central to U.S. labor law, it is useful to examine the rationale for this commitment in some detail.

Collective bargaining involves the right to negotiate a labor agreement without direct interference from the government or other outside forces. The political rationale for collective bargaining can be stated simply: the right to form unions and to strike is an essential component of political democracy. Walter Oberer and Kurt Hanslowe stated this premise succinctly: "One way of defining a free society may indeed be: a society the members of which are free to assert their individual interests collectively."[8]

One of the most famous and important examples of this function of an independent labor movement was the role of the Solidarity trade union in Poland in opposing the communist regime in that country during the 1970s and 1980s. The development of this independent labor union and its opposition to the Communist government played a central role in leading to the demise of Communist rule in Poland and throughout the rest of Eastern Europe.

Since the freedom to enter a contract also requires the freedom to reject a contract offer, the right to negotiate and the right to strike are closely related. Milton Konvitz stated this well in an article that explored the philosophical bases for the right to strike:

> Without the power to affect the course of events, a person or a group lacks the responsibility to reach decisions. Power is the source of responsibility. Without the right to strike, unions will lack the foundation for voluntary negotiation and agreement. If a free labor agreement—free collective bargaining in a free enterprise system—is in the public interest, so is the right to strike, which makes the free labor agreement possible.[9]

Three additional justifications have been offered by labor relations scholars for promoting and protecting collective bargaining, particularly as an alternative to direct government intervention in the workplace and regulation through employment laws. First, it is often argued that employees and employers have a better understanding of their needs, priorities, and problems than outsiders do. This suggests that more effective solutions to problems, or compromises that are more workable and acceptable to the parties, will be found in a bargaining process than where third parties constrain the participants from pursuing their own interests. Second, and perhaps more important, the parties may lose the capability to resolve their own problems once they begin to rely on outsiders for resolving their differences. The notion here is that effective problem resolution is a dynamic process that requires continual contact between the parties in dispute. Third, there is good reason to believe that when employees feel as though they have a say in the determination of their working conditions, morale is raised and productivity is often increased.

EMPLOYMENT LAW

Employment law includes the general set of laws that govern the individual employment contract and the terms and conditions of work. Major subjects covered by employment laws include minimum wages, hours of work and overtime pay, unfair dismissal, employment discrimination, and workplace health and safety.

Employment laws can serve as substitutes for or complements to the employment protections unions negotiate in collective bargaining. Employment laws may also serve as substitutes by establishing basic terms and conditions of employment that unions would otherwise have to expend bargaining power on negotiating. For example, since the Fair Labor Standards Act (FLSA) guarantees all workers overtime

pay at a time-and-a-half rate, unions do not need to expend scarce bargaining power in obtaining this at the negotiating table. However, there is also a danger to unions in that employees may come to view employment laws as substituting for unions to such a degree that they no longer view union membership and collective negotiations as necessary for providing adequate workplace rights and protections. It is noteworthy that in many advanced industrialized countries, rates of union membership and collective negotiations have declined in recent decades over the same period that employment laws have expanded.[10] On the other hand, employment laws can also operate as complements to the protections labor unions negotiate. Unions can negotiate provisions in collective agreements that supplement the provisions of employment laws. For example, a union might negotiate supplements to public unemployment insurance or retirement systems or bargain for protections against categories of employment discrimination that employment discrimination statutes do not cover. Researchers have also found that unions help facilitate the ability of employees to take advantage of the protections of employment law through mechanisms such as providing information about the provisions of these laws and protecting employees from retaliation by management when they seek to enforce the provisions of laws.[11]

Employment at Will

The most basic, foundational employment law in the United States is a common-law doctrine the courts developed called employment at will.[12] The **employment-at-will doctrine** states that the employee and employer are free to end the employment relationship at any time, for any reason, provided that the termination does not violate any statutory or contractual provisions. Application of this doctrine leads to the result that nonunion employees have no legal recourse if they are discharged unless the action violates specific legal or contractual provisions.

It is important to understand that the employment-at-will doctrine means that an employer can fire an employee for an unfair or bad reason without legal liability. For example, an employee could be fired for poor performance when in fact the employee's performance was exemplary or an employee could be fired arbitrarily for the color of shirt he or she wore to work that day. In either case, the employer can fire the employee without notice and without giving any severance pay and the employee has no legal recourse. A survey that tested people's knowledge of employment law found that most U.S. employees wrongly believe that the law is that they can only be fired for just cause; that is, for a good reason.[13] This false belief may shape employee attitudes and behavior in the workplace and diminish public pressure for changes in the law.

The Scope of the Doctrine

The employment-at-will doctrine is a default rule. This means that the parties are free to modify it through a contract if they so choose. They can do so by specifying in the employment contract that termination of employment can only be for just cause or that employment shall last for a specified period. Most individual employees lack the bargaining power to negotiate such a contract and

employers are rarely willing to offer one. Indeed, employers are often careful to include a statement in any contract or handbook that it is in no way intended to modify or alter the employment-at-will rule. However, three categories of employees are usually not subject to employment at will.

The first category of employees who have contracts that modify the employment-at-will doctrine is unionized employees. Most unions negotiate clauses in their collective bargaining agreements stating that employees can only be dismissed for just cause. This creates one of the most important differences in the terms and conditions of employment between unionized and nonunion workplaces.

Individual employees may also negotiate just cause or specified term of employment clauses in their individual employment contracts, but they must have sufficient bargaining power to get the employer to agree to this. For example, CEOs and other high-level executives commonly negotiate provisions in their contracts for compensation if they are terminated without just cause.

The third category of employees outside the employment-at-will doctrine is public sector employees covered by civil service and other public employee statutes, which often contain specific rules about when and how these employees can be fired.

Exceptions Created by State Courts

In recent decades, some state courts have modified application of the employment-at-will doctrine. Whereas federal statutes are the basis for labor law, states have primary authority over individual employment law. As a result, each state has its own employment law. Although they follow the same general principles, some are more favorable to employees than others. California, for example, is often considered to be the state where the courts are most favorable to employees.

State courts have awarded compensation to discharged employees based on three general categories of exceptions to the employment-at-will doctrine: implied contracts, public policy, and the covenant of good faith and fair dealing.

An employer's written policies or oral statements can establish a contract, providing employment security. A contract can also be implied by actions an employer takes. The **implied contract** can serve to limit the employee's discharge to just cause; that is, to cases where the employer has legitimate business reasons for the discharge. For example, in a case where an employer had induced a prospective employee to move across the country to take up a new position based on promises of job security, a state court ruled that the employer had created an implied contract that required just cause for discharge.[14]

A related concept is the idea that an employee handbook can constitute a contract that modifies the employment-at-will doctrine. In a number of state court cases since the 1970s, the courts found that employee handbooks can be contracts that modify employment at will. However, courts have also held that many handbooks are simply aspiration statements by employers, not binding contracts. In addition, after the initial wave of handbook cases, employers began to include waivers that specifically stated that the handbook was not a contract and that it did not modify employment at will. The courts have generally accepted

these waivers as long as they are prominent and clearly written. The result is that most employee handbooks are not considered contracts, even though employees may wrongly view them this way.

Courts have also held that it is illegal to fire employees for reasons that violate an important public policy, typically one that is reflected in a statute or the state constitution. For example, an Illinois court ruled that the firing of an employee for cooperating with a police investigation into the criminal wrongdoing of a co-worker violated public policy.[15] In this case, the court reasoned that there is no right to terminate a contract for an unlawful reason or a purpose that contravenes public policy. Such a privilege would encourage lawlessness, which the law is designed to prevent. Although the **public policy exception** may seem broad, the courts have generally limited its application to situations where the dismissal undermines a public policy clearly established in the state's constitution, statutes, or regulations. For example, the Pennsylvania Supreme Court rejected a claim based on the public policy exception in a case where the employee had made complaints about the safety of a chemical in the workplace where a federal (but not a state) statute supported the finding that this was an unsafe chemical.[16]

In a smaller number of states, courts have recognized the existence in employment contracts of a **covenant of good faith and fair dealing**. An application of this covenant is the idea that the employer cannot cheat the employee out of the benefits of their employment. For example, a Massachusetts court held that a company that fired a long-serving sales employee shortly before he was due to collect a large bonus for sales he had made had violated the covenant of good faith and fair dealing.[17] However, courts in only thirteen states have accepted this covenant as part of their state's employment law. Even in states where it has been accepted, a finding that the covenant has been violated usually requires some showing of deception or other nefarious action by the employer rather than merely a bad or unfair decision.

Although the three exceptions to the employment-at-will doctrine provide some important legal protections for employees, each exception has substantial limitations and applies to a limited, specific category of dismissals. Thus, even with recent modifications by the courts, nonunion employees have relatively few grounds for redressing discharge.

Employment Standards Laws

Society also has seen fit to regulate certain employment conditions more directly than it does collective bargaining. In the United States, these employment standards laws set certain minimum standards for employment and establish a basic social safety net for workers. As compared to other countries, however, the United States tends to have relatively little direct regulation of employment conditions (or what is called **substantive regulation**). In Western Europe, for instance, national laws directly set minimum wages and working conditions more extensively than their counterpart regulations in the United States.

Employment standards laws in the United States have been passed at both the state and federal level. These employment standards generally apply to all employees,

whether they represented by unions or not. Indeed, many of these employment standards laws were enacted partly as a result of the labor movement's political support for them. Employment standards laws provide a minimum set of standards for employment conditions that unions can then improve on through collective bargaining.

Workers' Compensation

Workers' compensation statutes were some of the earliest employment laws. Many states enacted them in the early twentieth century.[18] Workers' compensation laws provide for a type of basic no-fault insurance that compensates workers for injuries suffered on the job. Under workers' compensation laws employees automatically receive compensation if they can show they were injured on the job, regardless of whether the employer was at fault. In return, employees who have been injured on the job cannot sue employers. This was a substantial benefit for employers who were concerned about the costs of lawsuits brought by injured workers. The system is financed by workers' compensation premiums that employers pay. All states have now adopted some form of workers' compensation system.

Social Security Act of 1935

In the Social Security system this statute established, employees and employers pay premiums into Social Security while they are working. Once the employee retires, he or she is then paid a standard benefit that provides for a basic income level during retirement. Although Social Security was designed to be supplemented by private pension plans and individual employee savings, it was remarkably successful at reducing the formerly endemic poverty among older Americans. The act led to the development of the age of 65 as the standard retirement age, since this was the age when workers were initially able to receive Social Security benefits. (This age has now been raised to 67 for workers born in 1960 or thereafter.) The Social Security Act also funds disability benefits and unemployment compensation benefits through a system of grants that support unemployment insurance programs run by the states.

Fair Labor Standards Act

The Fair Labor Standards Act (FLSA), which Congress passed in 1938, regulates some minimum conditions of employment. It provides for a minimum wage, which Congress periodically updates. It establishes a minimum age of employment (16 for most jobs, 18 for hazardous jobs, and 14 for certain jobs such as newspaper delivery). It also provides for overtime pay: an employer must pay one-and-a-half times ordinary wages for the employee for any hours worked over forty hours in the same week. Employees not covered by these wage and hours rules, mostly managers and professionals paid by salary, are called **exempt employees** and are not entitled to overtime pay under the FLSA. Although the overtime pay requirement was designed to limit the number of hours individual employees worked and established the idea of the standard 40-hour work week, the FLSA does not

set any maximum on the number of hours an employee works in a day or a week.

Occupational Safety and Health Act

The **Occupational Safety and Health Act** (1970) set minimum standards for safety and health in the workplace. The act is administered by the Occupational Safety and Health Administration (OSHA), part of the **U.S. Department of Labor**, whose inspectors are authorized to inspect workplaces and investigate claims of rule violations and dangerous practices. Extensive regulations enacted under the authority of OSHA establish specific rules about safe practices in the workplace, maximum levels of exposure to dangerous substances, and other occupational safety and health issues. Research has found that enforcement of OSHA rules tends to be more active in unionized workplaces.[19]

Employee Retirement Income Security Act

The Employee Retirement Income Security Act (ERISA), passed in 1974, was designed to regulate the operation of pension and other employee benefit plans. It establishes minimum standards for the operation of private pension plans to avoid problems that could lead to the misuse and/or squandering of pension funds that employees are relying on for retirement income.[20] A weakness of ERISA is that while it regulates the operation of private pension plans, it does not require an employer to provide a pension plan for its employees or indicate how generous any plan that is established will be. In addition to pension plans, ERISA also regulates the operation of **welfare plans**, which include employer-provided health insurance plans.

Worker Adjustment and Retraining Notification Act

The **Worker Adjustment and Retraining Notification (WARN) Act**, passed in 1988, was designed to reduce the impact of plant closings and mass layoffs on workers by mandating advanced notice of layoffs and providing retraining opportunities. The WARN Act states that an employer with 100 or more employees who dismisses 50 or more of these employees during a 30-day period must provide written notice to the employees at least 60 days in advance of the impending layoff. If the employer fails to provide this advanced notice, it can be liable for the corresponding amount of lost wages. The WARN Act was a response to growing public concerns over layoffs in many traditional manufacturing industries in the 1980s. A wave of litigation based on the WARN Act occurred in response to the mass layoffs and downsizing in the wake of the collapse of the dot-com boom of the late 1990s.[21]

Family and Medical Leave Act

The Family and Medical Leave Act (FMLA), passed in 1993, requires employers with 50 or more employees to grant up to twelve weeks of unpaid leave to employees per year. The act covers those who are unable to perform their job duties because of a serious health condition, the birth of a child, or a need to

care for ill family members. The FMLA was enacted with the hope that it would facilitate a balance between the demands of the workplace and those of the family for working parents.

The FMLA is the most recent major piece of employment standards legislation enacted at the federal level. After periods of expansion in the 1930s and the 1960s through the early 1970s, enactment of new employment standards laws has slowed in recent decades. In the late 1970s and 1980s, U.S. public policy changed to a less interventionist style as policy returned to an emphasis on competitive markets at the micro and macro levels of the economy.

Employment Discrimination Law

Employment discrimination laws are part of the more general set of civil rights laws that have been enacted to prevent discrimination based on race, gender, religion, and other types of discrimination. Legal prohibitions against discrimination in employment are based on a series of statutes enacted from the 1960s onward. As with employment standards laws, employment discrimination laws apply to unionized and nonunion employees alike. Unions can also be liable if they engage in discriminatory practices, for example by discriminating based on race or gender in deciding who gets admitted to a union-run apprenticeship program.

The key statute for employment discrimination law is **Title VII of the Civil Rights Act of 1964**. Title VII prohibits discrimination in employment on the grounds of "race, color, religion, sex, or national origin." Note that Title VII prohibits discrimination based on any of these grounds, not just discrimination against minority groups. Thus, a majority-group white employee or a male employee can file a claim under Title VII if that employee believes they have been discriminated against; these are often referred to as reverse discrimination lawsuits.

Title VII prohibits two different types of employment discrimination: disparate treatment discrimination and disparate impact discrimination. In **disparate treatment** claims, the employee argues that he or she was treated differently because of race, color, religion, sex, or national origin. An employee who wasn't hired or was fired because of his or her race would be arguing that the employer engaged in disparate treatment based on race. Workplace sexual harassment is a type of disparate treatment based on sex that Title VII prohibits. Illegal sexual harassment in the workplace can involve either **quid pro quo** claims, where the employee is subject to demands for sexual favors in return for promotions or other benefits or based on threats, or **hostile environment** claims, where the employee is subject to sexually related comments or conduct that is so severe and pervasive as to alter the terms and conditions of employment. Sexual harassment claims can be especially difficult for a union to deal with as it may represent both the alleged harasser and the victim.

In **disparate impact** claims, the employee or group of employees argues that the employer has a policy that may appear neutral but in practice excludes a group of employees covered by one of the prohibited grounds. For example, if an employer has a minimum height requirement for a job, that would tend to exclude a disproportionate number of women from the job. If the employer

cannot justify this minimum height requirement as being job related and consistent with **business necessity**, then the requirement will be held to have an illegal disparate impact based on sex.

Subsequent employment discrimination laws have covered other grounds of discrimination. The **Age Discrimination in Employment Act** (ADEA) of 1967 prohibited discrimination against older workers over the age of 40. Unlike Title VII, the ADEA does not prohibit reverse discrimination, so an employee cannot make a claim about discrimination based on his or her youth and in any event is not covered by the ADEA if he or she is under the age of 40. The **Pregnancy Discrimination Act** of 1978 amended Title VII to define discrimination based on pregnancy as a type of sex discrimination; this reversed a previous Supreme Court decision that had ruled that pregnancy discrimination was not sex discrimination. The **Americans with Disabilities Act** (ADA) of 1990 prohibits discrimination based on disabilities. The ADA also established that employers have a positive duty to provide reasonable accommodations for employees with disabilities who are otherwise qualified to do their jobs.

The **Civil Rights Act of 1991** amended Title VII to reverse a series of conservative Supreme Court decisions in the 1980s that Congress saw as having weakened the 1964 act. The 1991 Civil Rights Act provided for jury trials in Title VII cases for the first time. It also allowed for compensatory damages for victims of discrimination if they suffered emotional distress, mental anguish, and other nonpecuniary losses in addition to lost wages. Punitive damages may be recovered if the employer acted with malice and reckless indifference to the law. Under the 1991 law, protected groups can more easily show disparate impact; the law instructs employers to show that hiring practices are related to the job in question and are consistent with business necessity. The law also states that employers must bear the burden of justifying practices that cause adverse impact. The Civil Rights Act of 1991 strengthened the enforceability of Title VII and caused employers to take more preventative steps to avoid discrimination suits.

Filing Employment Discrimination Complaints

To begin a legal claim for employment discrimination under the federal statutes, an employee must first file a complaint with the Equal Employment Opportunity Commission (EEOC). The EEOC will investigate the complaint and, if they find that it has merit, attempt to conciliate between the employee and employer to encourage a mutually acceptable resolution. After this administrative process is complete, the EEOC will issue a finding of cause or no cause. Whatever finding it makes, the EEOC will also issue the employee with a "right to sue" letter indicating that the employee has completed the required administrative process and is free to proceed to court with the claim if he or she wishes. The employee can then bring the claim of employment discrimination claim in a legal suit. Note that the employee can bring a lawsuit arguing that he or she has been subject to employment discrimination even though the EEOC may have issued a "no cause" finding; the employee is still entitled to his or her day in court.

In a small number of cases, the EEOC will file suit in court against the employer on behalf of the employee. Given the limited resources of the EEOC, this only occurs in a minority of cases (usually 1–2 percent of all cases) where particularly important issues are involved or large numbers of employees are potentially affected. In the vast majority of cases, employees who wish to proceed with a lawsuit must retain an attorney privately to handle the case. Most attorneys who represent employees as plaintiffs in cases do so on a contingency fee basis, where the attorney receives nothing if the employee loses the case and a percentage (typically 30–40 percent) of any damages awarded if the employee is successful.

The Growth of Employment Litigation and Its Outcomes

In recent years, concerns have grown over rising levels of employment litigation and large, unpredictable damage awards made by juries. Levels of employment litigation have increased since the 1960s with the passage of new employment discrimination and employment standards statutes. Additional impetus to the growth of employment litigation came in the 1970s and 1980s from the development by state courts of exceptions to the doctrine of employment-at-will.

Evidence is less clear that there has been a continued expansion of employment litigation in recent years. Although the number of complaints is substantial, there has been relatively little change in them over the past quarter-century. However, litigation data indicates that there was a substantial increase in the number of employment discrimination lawsuits filed in federal courts from the 1980s through the 1990s, growing from 8,937 cases in 1987 to 23,317 cases in 1998. This growth in the number of cases filed may reflect the greater damages available in discrimination lawsuits after the passage of the 1991 Civil Rights Act. The availability of punitive damages and compensatory damages for pain and suffering increased the incentive to pursue a claim of employment discrimination through the courts and facilitated the financing of cases by plaintiff attorneys through contingency fee arrangements. However, the annual number of employment discrimination lawsuits filed in the federal courts has declined slowly; in 2012, only 16,789 suits were filed. It is not clear whether a similar trend has happened in the state courts, where most employment lawsuits are filed in many states. One factor in the declining numbers of employment discrimination lawsuits may be a shift in the attention of plaintiff attorneys to employment standards cases. The number of wages and hours cases have increased significantly; claims under the Fair Labor Standards Act grew by 388 percent in the period 1997–2013.[22]

What about the outcomes of litigation? A study of employment discrimination cases in the federal courts found that the median (typical) award was around $200,000 in the 1990s and 2000s and rose to over $400,000 in 2013.[23] Beyond these typical awards, a relatively small number of large damage awards are made each year of over a million dollars. Although these awards are not typical, they tend to receive greater attention and likely influence perceptions of a threat to companies from litigation by employees.

Policy Goals and Key Court Decisions on Affirmative Action

The term affirmative action was first introduced in Executive Order 10925, which President Kennedy signed in 1961. The concept gives employers and unions a chance to voluntarily modify their employment practices and introduce affirmative actions to remedy the effects of past discrimination. While Title VII does not require affirmative actions to be taken, it does require nondiscrimination in hiring, pay, and promotion. Many businesses have found that affirmative action programs help assure their compliance with this standard.

Affirmative action programs have three different sources. The first is from federal government initiatives. This stems from an executive order President Johnson signed in 1965 that required federal contractors to analyze the proportion of female and minority employees relative to the relevant labor market and to establish goals and timetables for hiring to remedy the problem if there was an imbalance. Since most medium and large employers are federal contractors, this requirement has led to widespread attention to issues of equal employment opportunity by employers. The second source is public and private firms that have been required to develop affirmative action hiring and promotion goals and timetables by individual court decisions. These court-ordered affirmative action programs are typically responses to entrenched patterns of discrimination that have proven resistant to change. The third source is voluntary programs employers have adopted to improve the diversity of their work force. Many employers have adopted affirmation action programs without pressure from the government or the courts in a belief that a more diverse work force will enable them to recruit better employees and to better serve an increasingly diverse set of consumers.

Throughout the 1960s and early 1970s, the Supreme Court's civil rights rulings expanded the legal avenues available to women and minorities in battling discrimination, both past and present, in the workplace. However, beginning in the late 1970s, the Court made a conservative shift in its dealings with affirmative action issues. This trend culminated in the Court's 1995 ruling in *Adarand v. Pena*.[24] This 5–4 ruling on a case that dealt with federal affirmative action programs held that race-based preference programs are constitutional *only* in response to quantifiable evidence of discrimination against an affected party. In other words, there is to be no across-the-board entitlement to government preference for all members of a minority group based solely on historic discrimination. This decision has been viewed by some as a major obstacle to the ability of federal programs to award benefits based on race or sex.

The Court has made it clear that in order to legally implement an affirmative action program, parties must adhere to strict standards. An affirmative action is permissible only under the following conditions:

a. There is a "manifest imbalance" in the composition of the work force.
b. The plan is "narrowly tailored" and is designed to eliminate the imbalance in a way that does not "unnecessarily trammel" the legitimate expectations of other workers.

c. Race or sex are not the sole determinants in making any employment selection decision. The courts frown on employment selections based solely on these criteria. The employer must consider other pertinent factors such as experience and qualification.
d. The preferences terminate once balance in the job category has been achieved.[25]

An example of the effects of the Court's revised view of affirmative action is a training program in which a company and a union have agreed to admit more minorities than would have been eligible under the previous seniority rules. The Supreme Court has adopted a "strict scrutiny" standard in determining whether an affirmative action plan is valid. A plan is valid only if there is a "compelling interest" for implementing the plan. In addition, the plan must be "narrowly tailored" to achieve its objectives.[26] The government must identify and document the existing discrimination particular groups have suffered in the labor force and develop programs that are specifically designed to remedy that discrimination.

Recently, federal courts of appeal have required more evidence for the "strict scrutiny" standard, such as persuasive statistical data and anecdotal evidence to establish past discrimination against a particular group. Generally, the statistical evidence must show that the affirmative action plan is a "modest solution" to a history of discrimination that caused a significant underrepresentation of minorities in a particular job.[27] The courts have also identified a "narrowly tailored" plan as one that will affect only the specific underrepresented group and will have a minimal impact on the hiring or promotion of other groups. In analyzing the effects of past race-based discrimination, the courts consider four factors: (1) the necessity for the relief and the efficacy of alternative remedies; (2) the flexibility and duration of the relief; (3) the relationship between the numerical goals and the relevant labor market; and (4) the impact of the relief on the rights of third parties.[28]

State- and Local-Level Expansion of Employment Law

After a flurry of legislation in the early 1990s (the Americans with Disabilities Act of 1990, the Civil Rights Act of 1991, and the Family and Medical Leave Act of 1993), there has been little legislative activity at the federal level in the area of employment law. In the absence of action at the federal level, efforts to enact new employment laws have increasingly focused on local and state government.

Almost all states have state employment discrimination laws that parallel the federal Title VII provisions. These state laws often include provisions that go beyond the protections contained in federal law. For example, while Title VII does not explicitly prohibit discrimination based on sexual orientation (although the EEOC has argued that it does so as part of the ban on sex discrimination), twenty-one states and the District of Columbia have laws that explicitly prohibit discrimination in employment based on sexual orientation covering private and public sector employees and a further eight states have laws prohibiting sexual orientation discrimination against public sector employees only.

State laws have also gone beyond federal laws in the family and medical leave area. Whereas the federal FMLA provides only for unpaid family and medical leave, state laws in California, New Jersey, and Rhode Island provide some amount of paid leave (six weeks in California and New Jersey, four weeks in Rhode Island) and New York has recently enacted the most generous provision, which will gradually increase to twelve weeks' paid leave in 2021. In addition, laws requiring employers to provide paid sick leave, typically at the level of one hour of leave entitlement per thirty hours worked, have been enacted in Connecticut, California, Massachusetts, Oregon, and Vermont.

In addition to state laws, there have been many efforts to get local governments to enact ordinances providing for paid sick leave, higher minimum wages, or more general living wages. Although these ordinances apply only to the local municipality that enacts them, some of them can affect large numbers of workers, such as the paid sick leave ordinances in place in such major cities as New York, San Francisco, and Seattle.

Local political action has also had an important impact in the minimum wage area. Through the 1990s and 2000s, a series of living wage campaigns attempted to get local governments to enact minimum wages at a level that would support a reasonable family standard of living at wage levels that went well beyond the basic minimum wage mandated in federal and state laws. These living wage campaigns have had some successes, although the impact of the ordinances has often been restricted to public sector workers and contractors with the government.

More recently, the idea of a substantially higher minimum wage was given much greater prominence by the Fight for 15 campaign, which sought to enact a $15/hour minimum wage, over twice the current federal minimum wage of $7.25/hr. Initially focused on the fast food industry, the Fight for 15 campaign achieved its key breakthrough when a local campaign in the city of Seattle led to the enactment of a $15/hour minimum wage in that municipality. The success of the Fight for 15 campaign in Seattle has had powerful reverberations; both California and New York enacted state laws in 2016 that will move those two states with large populations to a $15/hour minimum wage over the next few years.

What do these major new developments in the employment law arena mean for U.S. unions? Notably, the Seattle $15/hour campaign was led by the Service Employees International Union (SEIU) local in that city, headed by David Rolf, its dynamic local president. Rolf made the $15/hour minimum wage campaign the central focus of SEIU's activities in Seattle instead of trying to win wage gains through collective bargaining. This is an interesting and potentially important example of a traditional union shifting its focus of activity away from collective bargaining and toward a strategy of obtaining legal enactments that benefit a broader set of workers. Similarly, in California, labor union support was a key factor in getting the state $15/hour minimum wage enacted. If this strategy begins to spread in the U.S. labor movement, it will mark a shift away from its traditional focus on collective bargaining and a return to one of the primary avenues of

union activity the Webbs identified in the late nineteenth century (see discussion in Chapter 1).

INTERNATIONAL LABOR LAW

Legal systems are primarily national; the ability to enact and enforce laws is a basic function of a sovereign state. The primary reference points for understanding the impact of law on labor relations are the laws of the United States we have just discussed. However, in recent decades, international labor law has also assumed increased prominence in labor relations. Many of the trade agreements the United States negotiates with other countries incorporate principles drawn from international labor law. By encouraging the signatories to these agreements to ensure that their national labor laws abide by the principles established in international labor law, the United States hopes to ensure that trade is conducted on fair terms and that countries are not able to gain an unfair advantage by subjecting their workers to deficient labor standards and poor conditions of work.

There is a long-standing body of international labor law composed of generally recognized principles that have been elaborated primarily through the work of the International Labour Organization (ILO). This body of international labor law has received increased attention in recent years with the growth of concerns about respect for basic labor rights in an era of globalization and transnational production chains. International labor law has also become an important component of regional economic systems such as the **European Union** or the North American Free Trade Agreement and an element that is included in increasing numbers of bilateral trade agreements between individual countries.

The ILO is the primary international agency tasked with developing international labor law standards. Originally founded in the 1919 under the League of Nations, the ILO is now an agency of the United Nations. It is structured as a tripartite organization with representatives of government, employers, and organized labor from each of its member countries.

The guiding principles of the ILO were set out in the 1944 Declaration of Philadelphia, which became part of the constitution of the ILO. The Declaration of Philadelphia echoes the basic principles of the field of industrial relations that we discussed in Chapter 1, including the ideas that

(a) labor is not a commodity
(b) freedom of expression and association are essential to sustained progress
(c) poverty anywhere constitutes a danger to prosperity everywhere

Central to the work of the ILO is the drafting and promulgation of conventions designed to guide the development of the labor laws of its member nations. The two central conventions for labor relations and collective bargaining are Convention 87 on "Freedom of Association and the Right to Organize" and Convention 98 on "Right to Organize and Collective Bargaining." To come into force, **ILO conventions** need to be ratified by the individual member nations. The widespread adoption of Conventions 87 and 98 is a key marker of the ILO's influence on

BOX 3.1
Provisions of ILO Conventions 87 and 98

ARTICLE 87

PART I. FREEDOM OF ASSOCIATION

Article 1

1. Each Member of the International Labor Organization for which this Convention is in force undertakes to give effect to the following provisions.

Article 2

2. Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization.

Article 3

3. (1) Workers' and employers' organizations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programs.

3. (2) The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof. …

PART II. PROTECTION OF THE RIGHT TO ORGANISE

Article 11

11. Each Member of the International Labor Organization for which this Convention is in force undertakes to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organize.

ARTICLE 98

Article 1

1. (1) Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.

1. (2) Such protection shall apply more particularly in respect of acts calculated to

(a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;
(b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.

Article 2

2. (1) Workers' and employers' organizations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.

2. (2) In particular, acts which are designed to promote the establishment of workers' organizations under the domination of employers or employers' organizations, or to support workers' organizations by financial or other means, with the object of placing such organizations under the control of employers or employers' organizations, shall be deemed to constitute acts of interference within the meaning of this Article.

the development of national labor law and the spread of international standards in labor law. At the beginning of 2017, 153 countries had ratified Convention 87 and 164 had ratified Convention 98. Two notable exceptions are the United States and China, which in contrast to their many other differences are similar in that neither country has ratified these two key conventions on labor relations and collective bargaining.

In 1998, the ILO adopted the **Declaration on Fundamental Principles and Rights at Work**, which formally recognized four categories of rights at work as fundamental workers' and human rights. These four categories are:

(a) freedom of association and the effective recognition of the right to collective bargaining
(b) the elimination of all forms of forced or compulsory labor
(c) the effective abolition of child labor
(d) the elimination of discrimination in respect of employment and occupation

The adoption of the declaration has been influential in spreading an international consensus that these four categories constitute core labor standards that apply in all countries. Some critics worry that by enunciating these four specific categories as core labor standards, the ILO is implying that other labor standards such as minimum wages and workplace health and safety are not equally fundamental. However, others have argued that labor rights other than those listed in the declaration should also be considered as core labor standards.[29]

One of the main activities of the ILO is the monitoring of compliance with international labor standards. Individual member nations are tasked with making annual reports to the ILO on measures they have taken to implement the ILO conventions they have ratified. In addition, the ILO conducts investigations in response to complaints of noncompliance with ratified conventions. These investigations can lead to reports that indicate whether a member country is in violation of its duties under a convention and, in serious cases, a determination of violation of treaty obligations. A major limitation of the ILO's investigations and monitoring of compliance with international labor standards is the lack of

effective enforcement mechanisms beyond moral suasion and the pressure of international public opinion. However, in recent years increasing numbers of trade agreements have included provisions where the countries signing the agreement agree to abide by the generally accepted international labor standards that the ILO has worked to develop.

Summary

Labor and employment laws are an important part of the external environment that influences the conduct of labor relations. How workers join unions, the process of negotiations, the right to strike, and the scope of collective bargaining are all shaped by labor laws. Employment laws determine basic questions of who is classified as an employee, provide for individual rights at work, and set minimum employment standards that provide a basis for negotiating improved terms and conditions.

The National Labor Relations Act of 1935 is the key labor law that governs collective bargaining in the private sector in the United States. It gives unions the right to strike, establishes representation election procedures, defines unfair labor practices, provides unions with representation rights for bargaining units where they have majority support, and in many other ways regulates collective bargaining. The National Labor Relations Board administers the NLRA, including the conduct of representation elections. A number of other administrative agencies also are involved in collective bargaining, including the Federal Mediation and Conciliation Service and the U.S. Department of Labor.

Significant issues addressed by the Taft-Hartley amendments to the NLRA, added in 1947, include union unfair labor practices, secondary boycotts, and representation limits on supervisors. The Landrum-Griffin amendments to the NLRA, passed in 1959, regulate the internal finances and governance of unions.

Before passage of the NLRA, courts restricted the rights of workers and unions by applying conspiracy doctrines and injunctions. In the early 1900s, a variety of laws, including the Clayton Act, the Norris-LaGuardia Act, and the Railway Labor Act, brought piecemeal changes to the regulation of collective bargaining. The NLRA established a comprehensive foundation for the rights of workers and unions.

Separate state laws regulate bargaining in the public sector. As described in Chapter 13, the presence and scope of these laws vary greatly across states. Bargaining in the airline and railroad industry is regulated by the Railway Labor Act.

Employment laws have expanded in recent decades. The foundation of U.S. employment law is the principle of employment at will, which allows an employer to fire an employee for any reason, good or bad, unless the worker is protected by a contract such as the just cause provisions contained in most union contracts. An important exception to this general rule is the protections against discrimination in employment based on race, gender, religion, disability, age, or other prohibited grounds. Recently there has been an expansion of minimum wage, parental and sick leave, and other employment standards in several states.

Frequently throughout the rest of this text, you will see reference to one of these labor and employment laws as we discuss how labor relations works. The influences of these laws are often felt in combination with some other aspect of the external environment. The next chapter examines how these other environmental factors shape collective bargaining.

Discussion Questions

1. How was the NLRA different from any previous labor law in the United States?
2. How did the Taft-Hartley Act change the NLRA and what was its effect on union strength?
3. U.S. labor law is often said to put heavy emphasis on the procedural regulation of collective bargaining and to involve relatively little regulation of substantive bargaining outcomes. In what sense is this true?
4. Do you think U.S. labor law meets the standards set out in international labor law?
5. Do you think employment at will is fair and effective? Why or why not?
6. Should labor unions pursue employment law reforms such as the Fight for 15 campaign instead of focusing on collective bargaining?

RELATED WEBSITES

General labor law materials:
http://www.law.cornell.edu/topics/labor.htm

National Labor Relations Act and National Labor Relations Board:
http://www.nlrb.gov

International Labour Organization and international labor standards:
http://www.ilo.org

Suggested Readings

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Notes

1. Benjamin J. Taylor and Fred Whitney, *Labor Relations Law*, 5th ed. (Englewood Cliffs, N.J.: Prentice Hall, 1987), 146–149.

2. Katherine Van Wezel Stone, "Labor and the Corporate Structure: Changing Conceptions and Emerging Possibilities," *University of Chicago Law Review* 55 (Winter 1988): 73.

3. *NLRB v. Mackay Radio & Telegraph Co.*, 304 U.S. 333 (1938).

4. In *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969), the Supreme Court held that the NLRB could issue an order for an employer to bargain with a union in the absence of an election in situations where unfair labor practices committed by the employer made a fair election an unlikely possibility. This type of order is called a Gissel bargaining order.

5. *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137 (2002).

6. E.g., *O'Connor et al v. Uber Technologies, Inc.,* C.A. No. 13-03826-EMC (N.D. Cal.).

7. *NLRB* v. *Yeshiva University,* 444 U.S. 672 (1980).

8. Walter Oberer and Kurt Hanslowe, *Labor Law: Collective Bargaining in a Free Society* (St. Paul, Minn.: West Publishing, 1972), 42.

9. Milton R. Konvitz, "An Empirical Theory of the Labor Movement: W. Stanley Jevons," *Philosophical Review* 62 (January 1948): 75.

10. Some have argued that this change is a general shift toward an individual employment rights era in labor relations. See Michael Piore and Sean Safford, "Changing Regimes of Workplace Governance, Shifting Axes of Social Mobilization and the Challenge to Industrial Relations Theory," *Industrial Relations* 54 (July 2006): 299–325; and Alexander Colvin, "American Workplace Dispute Resolution in the Individual Rights Era," *International Journal of Human Resource Management* 23, no. 3 (2012): 459–475.

11. For example, see David Weil, "Are Mandated Health and Safety Committees Supplement or Substitutes for Labor Unions?" *Industrial and Labor Relations Review* 52, no. 3 (1999): 339–360; John W. Budd and Brian P. McCall, "The Effect of Unions on the Receipt of Unemployment Benefits," *Industrial and Labor Relations Review* 50, no. 3 (1997): 478–492.

12. Sanford M. Jacoby, "The Duration of Indefinite Employment Contracts in the United States and England: An Historical Analysis," *Comparative Labor Law* 5 (Winter 1982): 85–128.

13. Pauline T. Kim, "Bargaining with Imperfect Information: A Study of Worker Perceptions of Legal Protections in an At-Will World," *Cornell Law Review* 83 (1997): 105–156.

14. *Torosyan v. Boehringer Ingelheim Pharmaceuticals, Inc.*, 662 A.2d 89 (Conn. 1995).

15. *Palmateer v. International Harvester Company*, 85 Ill.2d 124 (1981).

16. *McLaughlin v. Gastrointestinal Associates*, 561 Pa. 307 (2000).

17. *Fortune v. National Cash Register Co.*, 364 N.E.2d 1251 (Mass. 1977).

18. Terry Thomason, Timothy P. Schmidle, and John F. Burton Jr., *Workers Compensation: Benefits, Costs, and Safety under Alternative Insurance Arrangements* (Kalamazoo, Mich.: W. E. Upjohn Institute for Employment Research, 2001).

19. David Weil, "Enforcing OSHA: The Role of Labor Unions," *Industrial Relations* 30, no. 1 (Winter 1991), 20–36.

20. Dallis L. Salisbury, "The State of Private Pensions," in *The Future of the Social Safety Net: Social Insurance and Employee Benefits*, ed. Sheldon Friedman and David C. Jacobs (Champaign, Ill.: Industrial Relations Research Association, 2001), Ch. 6.

21. Diane E. Lewis, "An Old-Economy Law on Layoffs Applies for Downsizing Dot-Coms," *Boston Globe*, February 19, 2001, A1.

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24. *Adarand v. Pena*, 515 U.S. 200 (1995).

25. *United Steel Workers of America v. Weber*, 443 U.S. 193 (1979).

26. *City of Richmond v. J. A. Croson Co.*, 484 U.S. 1058 (1990).

27. *Majeski v. City of Chicago*, 218 F.3d 819 (7th Cir., 2000).

28. *Dallas Fire Fighters Assoc. v. City of Dallas*, 159 F.3d 438 (5th Cir., 1998).

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4 The Role of the Labor Relations Environment

A CONCEPTUAL FRAMEWORK FOR ANALYZING THE LABOR RELATIONS ENVIRONMENT

This chapter moves horizontally across the three-tiered framework by examining how the external environment in which labor relations develop influences the bargaining process and bargaining outcomes at the functional level. The discussion focuses on five key aspects of the external environment: the economic, public policy, demographic, social, and technological contexts of the bargaining relationship.

The external environment affects the bargaining power of labor and management, which determines bargaining outcomes. A union, for example, will be better able to gain a high wage and other favorable contract terms when it has relatively high bargaining power. It is often something in the external environment that determines whether a union has a lot of bargaining power in one situation and little power in another. Thus, we start this chapter with a discussion of how the external environment influences bargaining power and the bargaining process. For instance, we trace how a low unemployment rate (an aspect of the economic environment) strengthens workers' ability to hold out while on strike and thereby gives a union greater bargaining power.

The role of environmental factors is well illustrated by the response of labor and management to heightened international competition and continuing **corporate restructuring**. A conceptual framework is necessary for understanding how the external environment affected collective bargaining in recent years and in other periods.

This book uses John Dunlop's division of the labor relations environment into three main influences: (1) the **economic context,** (2) the **technological context,** and (3) the **locus of power** in the larger society.[1] In addition, this book considers the influence of the **social context** and the **demographic context.** The underlying theme is that labor and management can influence the environment and the environment also influences them.

On the one hand, the external environment supplies both incentives and constraints upon labor and management as they work to meet their bargaining

goals. Thus, it is important to consider how the environment shapes the power of the bargaining parties. On the other hand, the parties to collective bargaining also seek to mold their environment to better serve their needs. Thus, environmental influences are not entirely outside human control.

For example, since the 1920s, many employers in the textile, apparel, and other small, soft-goods industries have migrated from the Northeast to the South, partly (if not primarily) to take advantage of a more favorable economic environment (such as lower labor costs).

More recently, many U.S. manufacturing firms have opened production facilities overseas or established joint ventures with foreign producers, thereby contributing to an economic environment of sluggish employment growth in the United States in their industries. In this way, these firms have directly shaped the U.S. economic environment for collective bargaining.

The ability of involved parties to influence their environment is even more pronounced in the case of public policy because, quite simply, organized labor and management are the prime lobbyists who influence the public policies that regulate their own behavior. Consequently, in the long run the environment is to some extent influenced by the bargaining parties. Only in the short run should the environment be viewed as external and relatively fixed.

BARGAINING POWER

The external environment affects the bargaining power of labor and management. Three aspects of bargaining power come into play: the total power, the relative power, and the political power of labor and management. Total power concerns the total profits available to labor and management. The greater the profit is, the more is available for labor and management to divide up. Both labor and management prefer situations with greater total power. Relative power has to do with the relative strength of labor or management; in other words, the ability of either side to gain a larger share of a given amount of profit. In contrast to preference of both sides for greater total power, the interests of labor and management conflict with regard to relative power. Political power concerns the ability of labor or management to influence governmental actions—the public policies governments adopt that influence labor relations or the actions governments take as employers.

The Determinants of the Total Power of Labor and Management

The total power in a given bargaining situation is heavily influenced by two factors: the degree of competition an employer faces and the state of the economy. The degree of competition is affected by the amount of competition an employer faces from domestic and international competitors. Firms that face few competitors and thereby exert market power earn greater profits and have more resources for labor and management to divide up. In the most concentrated industries, a firm will be a monopoly and will earn monopoly profits. In this case the total power

of labor and management is at its maximum and bargaining is made easier by the fact that both high wages and high profits can be funded out of the firm's monopoly profits.

The state of the economy influences total power by affecting the level of demand (i.e., sales) and profits. Both labor and management prefer less competition and a strong economy.

The Determinants of the Relative Bargaining Power of Labor and Management

The relative bargaining power a union enjoys is heavily influenced by its and its members' abilities to withdraw their labor, usually (though not always) through a strike. Workers are more likely to win higher wages and other gains when they are willing and able to sustain a strike. In addition, once a strike has begun, it is more likely to succeed when the costs of the strike to the employer are greater. Thus, an employer's relative bargaining power is heavily influenced by its ability to withstand a strike. The simplest measure of relative bargaining power is the amount of strike leverage each party holds.

Workers can also withdraw their labor through more informal actions, such as working to rule (following rules strictly rather than pursuing effective work practices), the "blue flu" (large-scale worker absenteeism), and other means of slowing production. The discussion that follows focuses on the effects of strikes that involve workers who fully withdraw their labor. However, many of the points raised below carry over to less extreme forms of labor withdrawal.

How Strike Leverage Influences Relative Bargaining Power

The relative degree to which workers and an employer are willing and able to sustain a strike is their **strike leverage.** To measure each party's strike leverage, one needs to know what costs a strike would impose on each party and what alternative income sources are available to each party to offset any income losses a strike will bring. The discussions of the environmental contexts that follow help us understand what determines strike leverage.

THE ECONOMIC CONTEXT

Economic factors critically influence both total and relative bargaining power. Economic factors can be separated into those at the macrolevel (across the economy) and those at the microlevel (relevant only to a specific bargaining relationship).

Microeconomic Influences on Total Bargaining Power

Microeconomic factors influence the **total bargaining power** of an employer or a union through the effects competitive conditions exert on a firm. The greater the market power of a firm (i.e., the less competition it faces in the markets in which it competes), the greater will be the profits that firm earns. When profits are greater, there are more resources for the parties to divide based on their relative

power. A firm's market power is affected by the degree of domestic and international competition it faces.

Labor and management have a common interest that affects total power. Both sides want the company to have market power (if other factors are held constant that affect the relative power of labor and management). The existence of this potential common interest explains why unions sometimes join with management to push for government regulations that will increase the market power of their company. For example, the United Steelworkers union frequently joined with steel companies to lobby the federal government to restrict steel imports and to impose higher tariffs on steel importation.

MICROECONOMIC INFLUENCES ON RELATIVE BARGAINING POWER

Microeconomic factors are market forces that shape the amount of monopoly power a firm has. They include the number of competitors in an industry and the ease with which new firms can enter an industry. These microeconomic factors influence the relative bargaining power of labor and management through the ways they affect the parties' strike leverage and the **elasticity of demand** for labor (the **wage-employment trade-off**).

Management's Strike Leverage

The more an employer is willing and able to sustain a strike, the more likely a union will be to settle a strike before achieving all of its goals. Employee strike leverage derives from the how much a strike influences firm profits. The greater the profits a firm loses during a strike, the more ready it will be to give in to labor's demands. During a strike, a firm's profits are shaped by a strike's effects on production and sales. Figure 4.1 diagrams the principal determinants of an employer's strike leverage: the ability of workers to harm production, sales, and

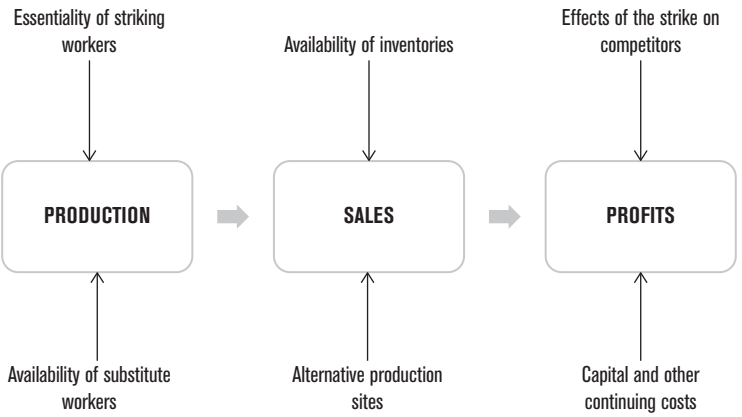

Figure 4.1. Determinants of management's strike leverage

profits and the ability of management to find alternative ways to maintain production, sales, and profits.

The effects of a strike on production: Once a strike has begun, the first indicator of workers' bargaining power is the degree to which the strike has impaired production and/or service. Workers who succeed in halting production because there are no readily available labor substitutes—supervisors, employees in another plant, strikebreakers, or automated equipment—have substantial strike leverage and bargaining power. In other words, these workers are essential to the production process. Craft workers, who are typically very difficult to replace because of their skills, often have significant strike leverage. For example, the high skill levels of electricians and repair machinists help explain why they earn so much more than production workers in the auto, steel, and textile industries.

The effects of a strike on sales: The power of a striking work group is tempered, however, if the halt in production does not lead to a reduction in sales. Employers can sever or at least weaken the link between production and sales if inventories are high or if alternative sites can be used to produce what normally would be produced at the site of the strike. Whether alternative production is available is influenced by the bargaining structure (whether the other sites are covered by the same union or contract) and by the extent to which other workers at other sites join or support the strike.

The effects of a strike on profits: Finally, even if a strike stops production and sales, the firm may not necessarily experience a serious decline in profits. For example, firms with relatively high ongoing capital or interest expenses have a harder time withstanding a loss of income caused by a strike. This helps explain why construction workers, who can temporarily halt costly construction projects, have so much bargaining power. In contrast, firms facing a strike that also shuts down all the competitors' operations have an easier time withstanding strikes because their lost sales and profits may be largely postponed rather than permanently forgone. Firms that have substantial savings or alternative income sources (such as from other lines of business) can more easily absorb the costs of a strike. Later sections of this chapter discuss how the recent growth in employers' nonunion operations has improved their strike leverage through this channel.

The Strike Leverage of Unions

Consider the other side—the strike leverage of unions. A union's strike leverage is determined by the ability and willingness of the work force to stay out on strike. The longer workers are willing and able to stay on strike, the greater the bargaining power of the union representing those workers will be and the more likely the union will be to win favorable employment terms from an employer, assuming that other factors are held constant.

Alternative sources of worker income: The willingness of workers to stay out on strike is heavily influenced by the degree to which alternative sources of income are available to the striking work force. Obviously, workers in unions that offer ample strike benefits can better afford to stay out on strike than those in other unions can. Likewise, when workers can more readily find temporary or **part-time** work that supplements union strike benefits or when they have accumulated substantial savings or assets, they are more able to sustain a strike action.

Worker solidarity: Another set of factors that influences the strike leverage of workers beyond the microeconomic environment is the attitude of union members. Workers' feelings of solidarity with one another influence whether picket lines will be honored and pent-up frustrations about the conditions that precipitate a strike will influence workers' willingness to stay out. In brief, strikes are highly emotional undertakings that depend on numerous factors, not simply the microeconomic environment.

The U.S. airline industry provides a good illustration of how microeconomic factors affect bargaining power. In recent years (see Box 4.1), union power in this industry has been increased by a wave of mergers among the major airlines. This has led to better collective bargaining outcomes for airline employees.

The Wage-Employment Trade-Off

Higher wages often bring cuts in employment. Thus, unions may in some cases choose not to raise wages as much as they could. This is called the **wage-employment trade-off.**

The key point is that there are employment effects from wage increases. Unions sometimes take these employment effects into consideration and moderate their wage demands. For example, unionized apparel workers received only modest

BOX 4.1

Airline Industry Consolidation Leads to Increases in Airline Union Power and Employee Pay

A good example of how employees and unions benefit from industry concentration (i.e., a microeconomic factor) is provided by the U.S. airline industry. At a recent meeting of airline company and union-side attorneys, it was noted that the recent merger wave among airlines would likely lead to better collective bargaining outcomes for airline unions and employees. An attorney who represents several airline unions summed it up by pointing out that airline consolidation gave the four remaining national carriers (American, United, Southwest, and Delta) more "pricing power" over their customers, which enabled them to boost profits and raised employees' expectations for wage increases and benefit improvements. Recent contract settlements have validated this observation. For example, on November 20, 2015, United Airlines and the Air Line Pilots Association (ALPA) agreed to a two-year contract extension that gave pilots a 13 percent pay increase in 2016, followed by annual increases of 3 percent and 2 percent. These increases raised the hourly base pay of United pilots above what pilots at American and Delta airlines earn.

Sources: Larry Swisher, "Post-Merger Airlines Size Ups Pressure on Contract Talks," *Daily Labor Report*, March 11, 2016, C-1; and Michael Sasso, "United Deal Said to Boost Pilot Pay in Bid for Labor Peace," *Daily Labor Report*, November 25, 2015, A-5.

wage increases in their collective bargaining agreements in recent years, in part because they feared that any higher wage payments would cause apparel firms to more aggressively shift production offshore or outsource production domestically to nonunion plants or firms. This trade-off between wages and employment is another important microeconomic influence on bargaining power and outcomes.

Marshall's Four Basic Conditions

Unions are more likely to consider the employment effects that result from a wage increase when these effects are greater. **Marshall's conditions** explain why a wage increase leads to large reductions in employment in one situation and to only small reductions in employment in another is explained.

In his seminal analysis of the relative bargaining power of labor and management, Alfred Marshall argued that unions are most powerful when the **demand for labor** is highly **inelastic**—that is, when increases in wages will not result in significant reductions in employment in the unionized sector.[2] Marshall proposed four basic conditions under which the demand for union labor would be inelastic: (1) when labor cannot be easily replaced in the production process by other workers or machines; (2) when the demand for the final product is not sensitive to changes in the price of the product; (3) when the supply of nonlabor factors of production is not sensitive to changes in the price of the product; and (4) when the ratio of labor costs to total costs is small.[3] Let us address each of these conditions in turn.

The difficulty of replacing workers: The first condition, the degree to which *workers are difficult to replace*, depends on the production technology. The more difficult it is to replace workers with machines or other workers, the less apt the workers will be to fear they will be displaced.

Unions can try to limit how easily management can introduce new technology by raising the costs of substituting other factors of production for union labor, but they face a dilemma when they consider that strategy. Although collectively bargained constraints on technological change may keep unions from losing employment, slowing the rate of technological change may also constrain the rate of productivity growth, limiting the long-run potential for wage increases.

The demand for the product: Workers face less of an employment decline from raising wages if the demand for the product produced by these workers is not sensitive to the price of the product. This sensitivity (what economists call the *elasticity of product demand*) is a second key condition Marshall identified. This condition is somewhat different from the other three in that it is influenced by consumer preferences and not by the actions of the firm or the union. The elasticity of product demand depends on the willingness of consumers to substitute other products.

A modern-day illustration of this principle is the threat imports pose to union power. Lower-priced imports become more attractive to domestic consumers when wages and prices in the domestic unionized economy increase. The auto, apparel, steel, and electrical appliance industries are all recent cases in point.

The supply of other production inputs: Marshall's third condition is the responsiveness of the price of other inputs in the production process to the demand for those inputs (what economists call the *elasticity of supply of other factors of production*). When an

employer turns to alternative inputs so it can employ less union labor, unions will be better able to push up wages (with less fear of employment cutbacks) if the price of other inputs rises a lot as their use increases. Thus, the more inelastic the supply curve for alternative inputs is, the greater union power is. Whereas Marshall's first condition concerns the degree to which it is *technologically feasible* to substitute machines or other factors of production for unionized labor, his third condition has to do with how costly production inputs are that can be used as alternatives to union labor.

Labor's share of total costs: Marshall's fourth condition is that unions are more powerful when labor costs are only a small proportion of total costs. This condition has often been restated as *the importance of being unimportant*. An employer is less likely to resist union pressure if a given wage increase affects only a very small proportion of the total cost of the product. Thus, a small craft unit, such as the skilled maintenance employees in a plant, is often less likely to meet management resistance to its wage demands than a **broad bargaining unit** that represents all production and maintenance employees would.[4]

Bargaining in the public sector demonstrates the difficulties unions experience when labor costs constitute a large proportion of total production costs. Labor costs for local government often account for between 60 and 70 percent of the budget, and in some jurisdictions the labor costs for occupations such as firefighting run as high as 90 percent of the budget. When local government officials seek to control total budget costs, they take a very hard line in collective bargaining because the wages and salaries of public employees are their largest controllable cost.

Do Unions and Workers Care about the Wage-Employment Trade-Off?

All of Marshall's conditions are based on the assumption that workers and unions are concerned about the employment effects of wage increases. When union members are willing to accept a slow rate of growth in employment or a decline in the number of union jobs as a trade-off for higher wages, the sources of power discussed above are less important.

Perhaps the classic example of a union that ignored the employment effects resulting from wage increases was the United Mine Workers of America (UMW) in the 1940s. UMW president John L. Lewis demanded high wage increases while giving employers a free hand to invest in labor-saving technology. The result was that although mine workers' wages increased, employment in the industry declined sharply throughout the 1940s and into the 1950s.[5] Despite this decline, the union's leaders did not soften their demands for higher wages.

Labor relations scholars have long debated the role the wage-employment trade-off actually plays in collective bargaining. Arthur Ross argued that political factors rather than employment consequences shape the wage policies of unions. Ross also claimed that workers' wage demands are heavily influenced by the comparisons they make with the wages of other workers or unions (what he called "orbits of coercive comparisons"), a practice that gives union leaders some leeway in defining their wage goals.[6] John Dunlop had a very different view of union wage policy. He claimed that unions do consider the employment consequences of their wage demands and that they may even try to maximize the employer's payroll.[7]

Concessionary bargaining from the 1980s on offers evidence that unions and workers do consider the employment effects of higher wages, particularly when higher wages might lead to a plant closing. Yet as Ross asserted, political factors played an important role in shaping whether and to what extent employment was a concern in wage bargaining. The willingness of workers to accept concessions and what they won in exchange for those concessions was affected by many factors, including business and union strategies.

MACROECONOMIC INFLUENCES ON TOTAL AND RELATIVE BARGAINING POWER

Economists refer to unemployment and the growth in national product or productivity as macroeconomic factors. The overall state of the economy affects bargaining power through a variety of channels. A firm is likely to be earning higher profits (greater total power) when the economy is strong and demand is growing. Both sides prefer periods of economic growth because these periods can sustain high wages and profits.

A union's strike leverage depends in part on the availability of jobs—both for the striking workers and for their spouses or other family members who might help support the strikers. The higher the unemployment rate, the less likely striking workers or family members will be to find substitute employment and the more likely it is that a striking worker's other family members will be on layoff. Thus, during the upswing of a business cycle (as the unemployment rate declines), unions generally gain strike leverage. Conversely, during periods of increasing unemployment, the relative power of unions declines. The factors at work here include the need of striking workers for alternative income sources and the vulnerability of employers to strikes when product demand is high. During periods of slack demand, employers may, in fact, welcome a strike because they can then lower their inventories and use the strike as a substitute for layoffs.

Wage Flexibility over the Business Cycle

The connection between macroeconomic conditions and bargaining power is supported by evidence that the rate of wage increases in the economy responds to the business cycle. Wages rise more quickly when the economy is growing and they increase more slowly (or fall) when macroeconomic activity is sluggish.

However, declines in product demand and increases in unemployment have been shown to have a weaker downward effect on collectively bargained wage increases than on wage increases in the nonunion sector.[8] Unions tend to aggressively resist wage cutting, and it is harder for union employers to cut wages or moderate the pace of wage increases during recessionary periods than it is for nonunion employers. The fact that union wage rates are often set in multiyear agreements (labor contracts in trucking and the auto industry, for example, have traditionally been for three years) makes union wages less responsive than nonunion wages to changing economic conditions.

POLITICAL POWER

The bargaining power of labor and management is influenced by their respective political power through a variety of channels. As mentioned above, one illustration of how politics matters is through the influence of public policies on the macroeconomic policies that affect the total and relative power of labor and management. Yet, as discussed in chapter 3, the legal system and public policies critically shape labor relations. The political power of labor and management matters because that power influences the laws and public policies that regulate labor relations.

Public policies also directly affect income through social welfare policies such as the minimum wage and social security pensions. This is another channel through which political power affects the bargaining power of labor and management. Political power also influences employment terms and conditions through its effects on the roles federal, state, and local governments play as employers (see Chapter 13). However, in the United States, the government does not exert substantial direct effects on employment terms and conditions in the private sector, especially when compared to the role of government in many other countries (see Chapter 15).

THE LEGAL AND PUBLIC POLICY CONTEXT

Law and public policy influence the legal standing of unions, the bargaining power of unions, and employment conditions. This section describes specifically how laws do this.

The Legality of Unionism and Union Activity

Public policy determines how easy it is for unions to form and sustain themselves. Imagine what would happen in a country where unionism was deemed to be illegal and workers were sent to jail if they tried to form unions or to conduct strikes. One would expect that under such a public policy there would be few unions and that organized representatives of workers would be able to do very little. What would be the long-term consequences of such policies, and would such a regime be sustainable?

If unions and union activity were outlawed, one would expect workers to have little influence that could provide a counterbalance to other powerful social forces. What happened in Poland, however, reveals that such a system can lead to conflict between workers and the government. The **Solidarity** union led a successful challenge to the Communist government in Poland. Unions were later active in the overthrow of governments in other Eastern European countries and in the former Soviet Union countries. Unionism in this region of the world thus promoted more than just the improvement of the working conditions of Polish workers. Events there and in other parts of the former Communist bloc remind us of the role unions can play as a democratic force in society.

Banning unions is one extreme. Legally requiring union membership is the other extreme role that public policy may play. No democratic government has chosen to follow this course. Instead, public policies about unionism in the United States and other democratic countries have taken a middle course. Considerable

variation exists among democratic countries regarding the regulations about which workers can join unions and how they can do so. In many countries, the regulation of unions has changed much over the last twenty-five years.

The NLRA's Effects on Bargaining Power

The NLRA and state statutes governing public and agricultural employees in the United States do more than just give unions the right to exist. These acts influence the processes and outcomes of collective bargaining through their regulation of the actions of workers, unions, and employers during collective bargaining. For example, the NLRA grants unions the right to strike and obligates employers to bargain in good faith. Without these policies, the bargaining power of unions might be severely weakened.

The NLRA influences the bargaining power of workers and employers in many ways. For instance, as discussed in Chapter 3, the Taft-Hartley amendments to the original NLRA made it illegal for supervisors to join unions that represent production workers.[9] In taking away the protection of the law, this amendment led to the demise of the numerous foreman unions that had formed.

The Effects of Direct Regulation of Employment Conditions

In the United States, certain employment conditions are regulated in more direct ways than collective bargaining is. Federal laws regulation overtime hours, unemployment insurance, pensions, and many other issues. These regulations are clearly important because they set employment terms. They also are important because of their indirect effects on bargaining power. For instance, the fact that workers in some states can collect unemployment insurance while they are on strike makes those workers more able to sustain strike action and increase their bargaining power than workers in states without this policy.[10] Unions in the United States and other countries support legislated minimum wages and minimum standards for other employment conditions. In recent years, unions in the United States have been strong supporters of campaigns to raise the minimum wage and campaigns for a "living wage" (see Chapter 6).

An Illustration of Government Employment Regulation: Pensions

Pensions provide an example of how government has influenced employment conditions. The **Employee Retirement Income Security Act (ERISA)** of 1974 has had profound effects on pensions. The act (1) specifies minimum standards for vesting of pension contributions; (2) requires more detailed reporting and disclosure of information about the plan to both employees and the government; (3) requires that all future liabilities be fully funded on an annual basis and all past unfunded liabilities be amortized; and (4) establishes an insurance protection program for workers affected by plan terminations. The costs of the termination insurance are met by a tax on existing plans.

The major policy problem ERISA created is the potential risk to the government that occurs when major multiemployer plans are terminated. Box 4.2 provides

BOX 4.2

Troubles Facing a Large Multiemployer Pension Plan and the Influence of Recent Federal Legislation

In January 2016, a New Jersey–based Teamsters local pension fund became the third multiemployer pension plan to apply for Treasury Department approval of benefit suspensions. The massive Central States Pension Fund became the first multiemployer plan to file for a rescue under the Multiemployer Pension Reform Act (MPRA) when it filed its application with the Treasury Department in September 2015. The MPRA, enacted in 2014, is a federal law designed to help financially troubled multiemployer plans avert insolvency by suspending the accrued benefits of plan participants. Supporters of the MPRA had successfully argued that without the law, some pension plans would become insolvent and the obligations of such funds would then transfer to the Pension Benefit Guaranty Corporation, a federal agency established to support pension funding, and possibly bankrupt that corporation.

Critics of the MPRA claimed that it allowed profitable companies to escape pension obligations. CNN reported the case of a retired UPS driver who was told that his Central States Pension Fund benefits would decline from $2,903 to $1,462 a month due to cuts allowed under the MPRA. It was noted that although UPS has earned high profits, it was able to withdraw from the Central States Pension Fund in 2008 (with a payment of $6.1 billion). UPS set up its own pensions fund, but it did not include retirees. Retirees' pensions continued to be covered by Central States. However, the Central States Fund has struggled in recent years to meet its obligations to UPS and other workers under the pressure of an aging work force (currently there are five retirees for every active worker).

The MPRA gives the U.S. Treasury Department the authority to decide if benefit cuts are fair. The U.S. Treasury used that authority to review a proposed rescue plan and its associated benefit cuts with the help of Ken Feinberg, a renowned mediator. Following Feinberg's recommendation, the Treasury Department rejected the proposed rescue plan in May 2016, asserting that the proposed benefit cuts were too extreme for some beneficiaries and that even if the proposed cuts were imposed, they would not assure the solvency of the beleaguered pension fund. Congress did not pass legislation that would have provided an alternative to the plan Feinberg rejected. In the absence of an acceptable funding rescue plan, the future of the Central States Fund is uncertain, as is the question of whether it will be able to meet its pension obligations.

Source: David Brandolph, "Third Multiemployer Plan Files Rescue Proposal," *Daily Labor Report*, January 26, 2016, A-9; Katie Lobosco, "Why 8,737 UPS Retirees Are Bracing for Pension Cuts," *CNN Money*, October 27, 2015, http://money.cnn.com/2015/10/27/retirement/ups-pension-cuts-central-states/; and David B. Brandolph, "Treasury Rejects Central States Pension Rescue Plan," *Daily Labor Report*, May 6, 2016, A-8.

an account of the controversy surrounding a proposed and then rejected rescue plan for the Central States multiemployer pension fund. As you will see, the rescue plan was influenced by recent laws that allowed pension funds to lower retiree benefits under certain circumstances.

ERISA is an example of government efforts to regulate pensions, a key employment condition. It also illustrates the difficulties the federal government has faced in its work to ensure that workers consistently receive fair treatment with regard to pensions.

The Role of Trade Policy

Trade policy is another way that public policies influence the economic environment. Debates about recent proposals to further liberalize trade policies illustrate the controversy surrounding these matters. President Obama's support for free trade sparked heated debates over trade policy as the nation faced large **trade deficits** and a loss of employment in the industries most threatened by foreign competition and imports (see Box 14.4).

The Labor Movement's Criticism of the NLRA

Union leaders frustrated with declining union membership and new organizing difficulties have begun to question the value of the NLRA. Labor leaders (and others) argue that NLRA decisions and representation elections take place only after enormous delays, caused in part by the lack of commitment to the original purposes of the NLRA. These leaders allege that such delays are the result of employer practices such as filing numerous challenges and requests for postponement and that these practices thwart the original intent of the NLRA that timely and fair elections take place. These critics argue that NLRB enforcement procedures operate to the advantage of management and against the original purposes of the law.

Labor leaders blame their lack of success in organizing on weaknesses in the NLRA and management's stepped-up union-avoidance tactics. They now debate which would be better for unions and workers: making major changes in the NLRA or eliminating it completely.[11] Adding complexity to this debate is the fact that in some cases, U.S. unions have clearly benefited from the NLRA and its administration by the NLRB.

THE DEMOGRAPHIC CONTEXT

The changing nature of the labor force has also caused many to ask whether collective bargaining is obsolete. It is thus important to examine the nature of those changes and to explore their implications for collective bargaining.

Changes in the demographic characteristics of workers and jobs will influence the needs and expectations of workers. These, in turn, may affect an individual's interest in union membership or willingness to stay out on strike.

Labor Force Trends

Since World War II, the U.S. labor force has grown at an unprecedented rate, largely as a result of the postwar baby boom. However, the labor force grew more slowly in the 1990s than it had in the previous two decades as a result of a decline in the birth rate.

This and several other factors is leading to profound changes in the composition of the labor force in the United States. In 2012, Generation X (those born from 1965 to 1980) surpassed the Baby Boomer Generation (those born from 1946 to 1964) as the largest segment of the labor force. Only three years later, in 2015, the Millennial generation (born from 1981 to 1997) overtook the Gen Xers. The Millennials are expected to represent an even larger share of the work force in the years to come as the 40 percent who are still in school begin to move into the work force.

Will these demographic shifts affect labor relations in the United States? Some analysts speculate that because they will have come of age in a time of precipitous decline for unionism, Millennials will be skeptical of collective bargaining. However, there have been some signs that they may be embracing collective action in the workplace. A highly public vote to authorize a union by the Millennial workers at *Gawker*, a new-media outlet, was soon followed by a vote for authorization at Salon.com, another such site. These events indicate an enthusiasm for unionism among some younger workers.

The Millennials may face divergent pressures. It is forecast that half of them will earn a college degree.[12] Those without higher education will face an increasingly precarious labor market in which full-time jobs will become less common and part-time and more contingent work will increase. Those with a college degree will enter a highly competitive labor market in which they may be expected to change jobs frequently, a trend that may make traditional union organizing even more difficult. The gap that is widening in wages between workers with college degrees and workers with no college degrees will also likely exacerbate income inequality and perhaps also income differentials by race unless the current tendency for African Americans to attend college less frequently than whites is reversed.

Any look at the changing work force of the United States must consider the impact of immigration. Particularly significant is the rising number of unauthorized immigrants who are working in the country. In 1990, the number of unauthorized immigrants living in the United States was 3.5 million. That number increased steadily until 2008, when it leveled off at about 11 million.[13]

A majority of immigrants are of working age, and indeed their entrance has provided a partial solution to the problem of an ageing work force. It is estimated that unauthorized immigrants account for 5.1 percent of the labor force. Most labor organizations in the country are attempting to reach out to these workers, abandoning the nativist tendencies of the past. This outreach is difficult, however, partly because many immigrants work in the agricultural sector, which the NLRA does not protect.

IS THE U.S. ECONOMY DEINDUSTRIALIZING?

The increase in the number and share of service and part-time jobs has spurred an intense debate. Barry Bluestone and Bennett Harrison claim that the growth in these jobs signals a decline in the manufacturing base of the U.S. economy (they call the process **deindustrialization**). They further argue that these shifts in job composition go hand in hand with increasing inequality in the income distribution. The better-paying jobs such as skilled trades, steel, and auto production jobs, they claim, are disappearing and are being replaced by lower-paying service jobs.[14] The spread of corporate downsizing led Bennett Harrison to conclude that American corporations are becoming "lean and mean." These developments may have contributed to the growing income inequality that is occurring in the United States.

On the other side of the debate are analysts such as Robert Lawrence who hold that the growth in the number of service and part-time jobs has been a response to the availability and desire of workers who want those jobs and have the right skills for them.[15] These observers see this as a sign of health in the U.S. economy and compare the job growth in the United States in recent years to the sluggish employment growth in Europe over the same period.[16] There is also a middle position in this debate: some say that deindustrialization is not happening but at the same time point to many persistent problems in the U.S. labor market.[17]

The issues at stake in this debate are of enormous importance. If one decides that the labor market is relatively healthy, there is little reason to seek government policies to alter the outcomes in that labor market, but if one believes that the labor market is in trouble, there is every reason to seek federal policies to redress an imbalance. Furthermore, any answer to the questions of whether deindustrialization or income inequality are taking place will affect government policy toward collective bargaining and many other labor market institutions.

The shift to a larger service sector and more part-time and home-based employment has two indisputable implications for collective bargaining and union organizing. First, since part-time workers have looser attachments to a single employer than others (they are often employed only temporarily), union organizing among them is more difficult and probably requires nontraditional techniques. It is not surprising that the labor movement has vigorously opposed the growth of temporary and home-based work. It is unlikely, however, that labor's opposition will have any effect on the growth in these types of employment relationships. Thus, if unions are to organize these workers, they will need to develop policies and strategies that are tailored to their particular needs. One strategy that unions have discussed is providing associate member status or individual forms of representation to these workers.[18] Other solutions may be developed outside the United States, since the growth in temporary, part-time, and home-based work is a problem labor movements all over the globe are facing.

Second, the ease with which striking service workers can be replaced makes it difficult for unions to acquire bargaining leverage through strikes in those

sectors. Several unions that represent service workers have been experimenting with strategies for broadening support for their demands through community groups such as churches. Service unions also have been experimenting with working to rule and other strategies that can increase leverage against employers without taking strike action.

THE DEMOGRAPHIC PROFILE OF UNION MEMBERS

The average union member is more apt to be working in industries, occupations, and regions in which the demand for labor is either declining or is growing at a slower pace than elsewhere in the economy. In addition, women, whose labor force participation is increasing rapidly, are underrepresented in the unionized sector.

These developments pose many challenges for unions. The traditional constituency of unions—male, blue-collar, manufacturing, mining, construction, and transportation workers living in the Northeast or North Central regions—is declining in significance. Current union members are on average older and less well educated than the new entrants to the labor force. Unions may have difficulty adjusting to the demands of a younger, more vocal constituency.

Demographic Challenges for Unions

Demographic diversity can affect union policies. Once people join unions, they tend to try to shape union policies to reflect their own preferences. This process of political representation becomes troublesome to unions when members' views change rapidly. The very purpose of a union is to pursue the common goals of its members through the exercise of collective power. Thus, the more rapid the demography changes and the more heterogeneous the union constituency becomes, the greater the potential for internal conflict and the more difficulty the union will have in trying to establish bargaining priorities.

New union members sometimes have a difficult time creating an effective political base. This is a problem that sometimes confronts newly hired, younger workers as they try to influence the existing, often older, union leadership. Women, racial and ethnic minorities, and any other new group that moves into union jobs faces the same challenge. Until these groups can establish an effective political base and pressure union leaders, it is not likely that unions will give their needs as high a priority as they might desire.

In short, the demographic context of union membership affects collective bargaining, the attitudes union members have toward their jobs, and the skills workers bring to the job. If unions do not successfully organize the new members of the work force, their membership will decline even further. If unions do succeed at organizing the new workers, they will face pressures for change—both within their organizations and at the bargaining table. In any event, it is clear that any analysis of collective bargaining must account for the demography of the labor force.

THE SOCIAL CONTEXT

How does the American public see the union movement? Is society supportive of or hostile to unions? These are aspects of the social context that can affect industrial relations.

Polls that include questions about unions reveal fluctuations over time in the public's image of unions. Gallup polls, for example, show a decline in the share of the population that approves of labor unions since the high in 1965 of 71 percent. However, public support for unions has improved in recent years. The percentage of the public that approves of labor unions, according to the Gallup Poll, increased to 58 percent in 2015 (see Box 4.3). Gallup polls also show that when asked where their sympathies were in recent labor disputes, more of the public was sympathetic to unions than to companies. Gallup polls also show that the public views big business as a bigger threat to the country in the future than unions.

BOX 4.3
Public Approval of Labor Unions—Evidence from Polls

Recent Gallup polls had identified the following public attitudes toward unions:

1. Do you approve or disapprove of labor unions?
   58% Approve
   36% Disapprove
   7% No opinion
2. Would you, personally, like to see unions in the United State have more influence than they have today, the same amount as today, or less influence that they have today?
   37% More influence
   24% Same amount
   35% Less influence
   4% No opinion
3. In your opinion, which of the following will be the biggest threat to the country in the future—big business, big labor, or big government?
   27% Big business
   8% Big labor
   61% Big government
   4% No opinion

Sources: Data for Questions 1 and 2 are from a Gallup poll conducted in August 2015. Data for Question 3 are from a Gallup poll conducted in December 2005. Lydia Saad, "Americans Support for Labor Unions Continues to Recover," Gallup Organization, August 2015 www.gallup.com/poll/184622/americans-support-labor-unions-continues-recover.aspx.

At the same time, responses to other questions regularly asked in the Gallup and other polls reveals that the level of public confidence in organized labor (and big business) are consistently and substantially lower than public confidence in the military, churches and religion, the Supreme Court, and public schools. But although it is skeptical about union leaders, the American public has continued to express strong approval of the functions unions perform in representing worker interests. Polls show, for example, that a majority of the population approves of unions in general and believes in the right of workers to join unions of their own choosing.[19] Thus, the majority of Americans apparently accept the legitimacy of unions as a means for protecting the economic and job-related interests of workers.

American workers also seem to have a **dual image of trade unions.** On the one hand, the majority of workers see unions as big, powerful institutions that have significant influence in political decision making and with elected officials and over employers and union members. The majority also take a skeptical view of union leaders' personal motivations. On the other hand, an equally large majority of workers see unions as helpful or instrumental in improving the working lives of their members. Evidently, then, most U.S. workers are skeptical about the political activities of trade unions but accept their collective bargaining activities.

THE TECHNOLOGICAL CONTEXT

Technological change played a major role in workers' early efforts to unionize. It also is clear that our economy is in the midst of technological changes that will have huge effects on future employment conditions. Yet many people still disagree about how and why technology influenced early unionization and what current technological changes imply for the future of labor relations.

The Historical Debate over the Influence of Technology: Commons versus Marx

Both Karl Marx and John R. Commons believed that workers were spurred to join unions by technological change, the shift from craft systems of production to the hiring of wage labor, and the rise of the modern factory system. But they disagreed sharply over exactly why changes in technology and the organization of work had that effect.

For Marx, the critical event in industrialization was the chasm that capitalist methods of production opened between workers and the owners of the means of production. That chasm, according to Marx, would inevitably result in a worsening of working conditions, a sharp decline in corporate profits, and the emergence of a revolutionary class consciousness among workers. Followers of Marx argue that the loss of control that workers experienced as a result of the shift in production methods and ownership is what led them to form unions. To those observers, collective bargaining was, and is, a continuing battle between workers and managers over control of the production process. Harry Braverman

built on this argument and claimed that technological change typically leads to a lowering of the skills required in jobs **(deskilling)** as part of this battle for control.[20]

Commons, in contrast, observed that the shift in production methods was itself a product of an expansion of the market brought about by urbanization and new transportation methods. For Commons, as the market expanded and the ownership of production changed, workers came up against a host of competitive menaces such as prison labor or child labor. Workers then turned to unions to protect themselves and to improve their standard of living. Commons and his students, such as Selig Perlman, argued that unions and workers sought income security and job security rather than control of the production process.[21] Thus, although Marx and Commons differed sharply in their interpretations of unions' objectives, both saw the rise of capitalism as the spur to unionization.

For Clark Kerr, John Dunlop, Frederick Harbison, and Charles Myers, it was the process of **industrialization** and not capitalism per se that led to changes in the relationship between workers and employers that, in turn, led to unionization.[22] They argued that modern technology produced a need for rules that governed relations between workers and employers. Collective bargaining and contractually negotiated rules were a logical way to formalize and structure the rules required in modern industry. Within this framework, specific technological changes are important for collective bargaining because they bring changes in the relative bargaining power of management or labor. In this regard, the industrialization thesis is closer to Commons's ideas than to those of Marx.

The Influence of Microelectronic Technology on Skill Levels

The recent expansion in the use of microelectronic technology has reignited the debate over the effects of technological change and the possibility that the economy will become stuck in a perpetual state of high unemployment. To some, this technology can open the way to less hierarchical work that requires higher skill levels and leads to further growth in real incomes. To others, the new technology is being used to wrest control away from the work force and to deskill workers now just as new technology allegedly was used in the past.[23] To still others, the inevitable consequence of the microelectronic revolution is high unemployment.

Skeptics who doubt the positive role of new technology see little evidence of a shift away from the hierarchical forms of work organization. In fact, these modern proponents of the deskilling thesis argue that much of the concessionary bargaining in recent years has demonstrated the efforts of management to increase the pace of work and use new technology to weaken workers' bargaining leverage and skills. The deskilling thesis proponents also predict that new technology will lead to significant employment displacement and unemployment.

Some behavioral scientists believe that new technologies serve to "unfreeze" existing practices and introduce a variety of options for reconfiguring the organization of work, career ladders, compensation criteria, and other aspects of the

employment relationship.[24] In this view, technology has no single effect on skills or worker power. Instead, its effects depend on the choices decision makers make and the way the new technology is implemented.

RECENT ENVIRONMENTAL PRESSURES ON COLLECTIVE BARGAINING

In the face of the slow but steady economic growth in the United States as the economy recovered from the 2008–2009 financial crisis, a few unions, such as the autoworkers and airline pilots, were able to achieve solid collective bargaining gains. Nevertheless, changes in the external environment put unions at a distinct disadvantage in terms of their bargaining leverage with management. Corporate restructuring and the availability of outsourcing and nonunion alternatives continue to put pressure on unions, and increasing globalization heightened those pressures.

Pressure from Nonunion Competition

Unions face competition from the growing numbers of domestic nonunion firms. In industries such as construction, trucking, textiles, and mining, the share of nonunion production has increased substantially. Even in traditional strongholds of unionism such as steel and autos, nonunion firms are entering the industry. Nonunion competition has become an even greater threat as employers have become more willing and more able to shift production to nonunion sites during strikes. As a result, unions have become less able to **take wages out of competition** and their bargaining power has declined significantly.

Heightened International Competition

The growing penetration of imports in several key manufacturing industries and the large trade deficit carried the issue of the international economy straight to collective bargaining agendas. Foreign workers have become a major competitive threat to organized labor in the United States because it is very difficult for unions to take wages out of competition when goods and investments move easily across national and international borders. Perhaps the growth of the multinational companies is the modern-day equivalent of the competitive menaces the Philadelphia shoemakers faced.

Image Problems of Unions

Economic pressures are only part of the story, however. The labor movement encountered a public that is often skeptical about the value of unions and worker solidarity. Fellow workers often crossed the picket lines of strikers, and union members found less support for strikes in the broader community. From the 1990s, when unions sought recourse through the NLRB or the courts to block management practices such as the movement of operations to other sites or the abrogation of collective bargaining contracts during bankruptcy reorganization, they received little help.

Signs of Innovation in the Labor Movement

The economy, public policy, ideology, and demography had all taken a turn that would hamper the efforts of organized labor. And yet, in the face of all these environmental pressures, the union movement was exhibiting some signs of innovation and adaptation. There has been a broadening of the bargaining agenda and increased union involvement in managerial decision making at some workplaces and union coordination with various rights groups who are seeking reductions in income inequality and an improvement in employment terms for those at the lower end of the earning distribution (see Chapter 6). Moreover, the labor movement has been engaged in serious soul-searching since the first decade of the new century that has led to a variety of union revitalization measures.

Summary

This chapter examined how the external environment influences the bargaining process. The five key aspects of the environment are economic, public policy, demographic, social, and technological factors.

Important economic factors include those that operate at the firm level (the microeconomic influences) and the state of the labor market and the overall economy (the macroeconomic influences). The economic environment is most important through the effects it exerts on the bargaining power of labor and management. Bargaining power is heavily influenced by strike leverage and the extent to which an increase in wages leads to a decline in employment (the wage-employment trade-off).

Public policy shapes the rights of the parties and the procedures used in collective bargaining. There has long been a strong preference in the United States for labor laws that give employees, unions, and management the right to directly shape employment terms with limited interference from the government. The most important labor law in the United States is the National Labor Relations Act and its amendments. In addition, some federal laws directly influence employment conditions such as pensions and equal employment opportunity rights, although we have relatively less government regulation of employment than other countries do.

Major demographic issues include the increased labor force participation of women that has occurred since World War II. The labor force is becoming more diverse and unions face the challenge of altering their policies to increase their appeal to new workers, many of whom work in the service sector.

The public continues to express support for the general purposes unions serve. When asked about union leaders or their willingness to join unions, however, the public's responses are less favorable.

Technology influences employment levels and bargaining leverage. In recent years, there has been much debate about how technology is affecting the skill levels of workers. On the shop floor, labor relations play an important role in shaping how well new technology is implemented.

How well collective bargaining serves the interests of labor and management often depends on its ability to adapt to changes in the external environment. Economic pressures on the U.S. collective bargaining system have steadily increased in tandem with the expansion in international trade. There are also pressures from the other key environmental dimensions. To help build a better understanding of how collective bargaining could respond to these environmental challenges, the next chapters examine how collective bargaining works.

Discussion Questions

1. Define bargaining power and strike leverage.
2. Several microeconomic factors play a part in the strike leverage of both unions and employers. Briefly describe some of these factors.
3. Describe some of the ways the National Labor Relations Act influences the bargaining power of labor and management.
4. Briefly discuss some of the recent demographic trends in the work force.
5. Is the labor law framework that was adopted in the 1930s still appropriate?
6. What changes in the industrial environment have placed unions at a disadvantage in terms of bargaining power in recent years in most industries?

Related Web Sites

United Mine Workers (UMW):
http://umwa.org

Pension Benefit Guaranty Corporation:
http://www.pbgc.gov

Suggested Supplemental Readings

Blauner, Robert. *Alienation and Freedom*. Chicago: University of Chicago Press, 1964.

Brynjolfsson, Erik, and Andrew McAfee. *The Second Machine Age*. New York: Norton, 2014.

Ehrenberg, Ronald G., and Robert S. Smith. *Modern Labor Economics*. 8th ed. Reading, Mass.: Addison-Wesley, 2003.

Harrison, Bennett. *Lean and Mean: The Changing Landscape of Corporate Power in the Age of Flexibility*. New York: Basic Books, 1994.

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Notes

1. John T. Dunlop, *Industrial Relations Systems* (New York: Holt and Company, 1958).

2. Elasticity of demand refers to the slope of the demand curve for labor. The more inelastic the demand, the more vertical the demand curve and the less responsive the demand for labor to any change in the price of labor. A perfectly elastic demand curve would be horizontal. Alfred Marshall, *Principles of Economics*, 8th ed. (New York: Macmillan, 1920), 383–386.

3. Others have pointed out that for a low labor cost ratio to act as a source of power, as Marshall hypothesized, the elasticity of demand for the final product must be greater than the elasticity of substitution of nonlabor inputs in the production process. See Richard B. Freeman, *Labor Economics*, 2nd ed. (Englewood Cliffs, N.J.: Prentice Hall, 1979), 67–71.

4. A small bargaining unit can be affected by employers who consider the "spillover" effects of a settlement that is negotiated with one small unit on the rest of the firm's work force.

5. Even if the union had tried to influence employment levels, it might not have been successful in the face of technological change in the industry.

6. Arthur M. Ross, *Trade Union Wage Policy* (Berkeley: University of California Press, 1948).

7. John T. Dunlop, *Wage Determination under Trade Unions* (New York: Macmillan, 1944).

8. Daniel J. B. Mitchell, *Unions, Wages, and Inflation* (Washington, D.C.: Brookings Institution, 1980), 113–162.

9. Although the Taft-Hartley amendments do allow management to voluntarily bargain with a union that represents supervisors, such bargaining is extremely rare.

10. The effects of public policies on strike leverage are discussed in Robert Hutchens, Robert B. Lipsky, and Robert N. Stern, *Strikes and Subsidies: The Influence of Government on Strike Activity* (Kalamazoo, Mich.: W. E. Upjohn Institute for Employment Research, 1989).

11. "AFL-CIO Will Oppose Collyer Nomination as Board Counsel," *Daily Labor Report* 9 (May 1984): A-4.

12. Jonathan Timm, "Can Millennials Save Unions?" *The Atlantic*, September 7, 2015, http://www.theatlantic.com/business/archive/2015/09/millennials-unions/401918/; Richard Fry, "Millennials Surpass Gen Xers as the Largest Generation in U.S. labor Force," *Pew Research Center*, May 11, 2015, http://www.pewresearch.org/fact-tank/2015/05/11/millennials-surpass-gen-xers-as-the-largest-generation-in-u-s-labor-force/.

13. Jens Manuel Krogstad, Jeffery S. Passel, and D'Vera Cohn, "5 Facts about Illegal Immigration in the U.S.," *Pew Research Center*, November 17, 2015, http://www.pewresearch.org/fact-tank/2015/11/19/5-facts-about-illegal-immigration-in-the-u-s/.

14. Barry Bluestone and Bennett Harrison, *The Deindustrialization of America* (New York: Basic Books, 1982).

15. Robert Z. Lawrence, *Can America Compete?* (Washington, D.C.: Brookings Institution, 1985).

16. See, for example, Neal Rosenthal, "The Shrinking Middle Class: Myth or Reality?" *Monthly Labor Review*, March 1985, 3–10.

17. See, for example, Paul Osterman, *Employment Futures* (New York: Oxford University Press, 1988).

18. AFL-CIO Committee on the Evolution of Work, *The Changing Situation of Workers and Their Unions* (Washington, D.C.: AFL-CIO, 1985).

19. Daniel B. Cornfield, "Shifts in Public Approval of Labor Unions in the United States, 1936–1999," *Gallup*, September 2, 1999, http://www.gallup.com/poll/24937/shifts-public-approval-labor-unions-united-states-19361999.aspx.

20. Harry Braverman, *Labor and Monopoly Capital* (New York: Monthly Review Press, 1984).

21. Selig Perlman, *A Theory of the Labor Movement* (1928; repr., Philadelphia: Porcupine Press, 1979).

22. Clark Kerr, John T. Dunlop, Frederick Harbison, and Charles A. Myers, *Industrialism and Industrial Man* (Cambridge, Mass.: Harvard University Press, 1960).

23. David F. Noble, *Forces of Production* (New York: Oxford University Press, 1986); Harley Shaiken, *Work Transformed* (New York: Holt, Rinehart & Winston, 1984).

24. Erik Brynjolfsson and Andrew McAfee, *The Second Machine* Age (New York: Norton, 2014); Barry Wilkinson, *The Shopfloor Politics of New Technology* (London: Heinemann Educational Books, 1983).

PART II

The Strategic Level of Labor Relations and Structures for Collective Bargaining

5. Management Strategies and Structures for Collective Bargaining
6. Union Strategies and Structures for Representing Workers

5 Management Strategies and Structures for Collective Bargaining

THE IMPORTANCE OF STRATEGIC DECISIONS

Chapters 5 and 6 start the movement downward in our framework by considering how the strategies of both management and unions shape the course of labor relations. We look at management first because management has been the main initiator of change in labor relations since 1990. It is management, for example, that has increased the growth of nonunion practices and pressured unionized workplaces for contractual changes that improve efficiency, quality, or customer service. This chapter examines the strategic choices management has made and the structures management commonly uses during collective bargaining. The text examines why and how management has pursued various labor relations options.

Some of our attention will again focus on the role of the external environment. For instance, heightened international competition has played a critical role in shaping management's strategic actions. At the same time, management retains a high degree of choice in deciding labor relations policies. Tracing managerial strategies requires consideration of both the union and nonunion labor relations systems that management sees as alternatives. For example, firms that have unionized work forces in some of their plants often also operate some nonunion plants.

Where unions exist, management's key tasks are bargaining and administering contracts with those unions. Although it is necessary to assess the broad labor relations strategies management uses, this chapter also reviews how management prepares and structures itself to participate in the collective bargaining process.

Management's Strategic Choices—Theoretical Considerations

Management makes strategic choices in the design of personnel policies and in the way it responds to employees' desires and expectations, including their demands for union representation. Management also makes strategic choices about its business plans. These choices that are sometimes based on consideration of the linkages between human resources and **business strategies**.

If a company's employees become unionized, management will attempt to use its bargaining power to shape collective bargaining processes and outcomes. Although an employer's need to negotiate with union representatives adds some constraints to its strategic options in unionized settings, the employer's preferences for personnel policies are still heavily influenced by business strategies. For example, managers may have to make decisions about whether to continue investing in a product line, whether to try to operate nonunion establishments to produce a given product, or whether to supply a product by relying more heavily on outsourcing parts of its supply chain (companies that supply parts or partially finished products) to another plant or firm. These decisions all influence management's bargaining leverage in any part of a firm covered by a labor contract.

ALTERNATIVE LABOR RELATIONS SYSTEMS

Management can choose among six types of labor relations systems, or patterns. Each of these six patterns, which are summarized in Table 5.1, has key personnel policies. Although it is clearly an oversimplification, this categorization scheme can help clarify the choices management commonly makes.

Nonunion Labor Relations Patterns

There is wide diversity in labor relations practices in the nonunion sector. Nonunion labor relations systems exhibit three basic patterns.[1] The common element across the three nonunion patterns is that management policy is influenced by management's desire to stay nonunion. At the same time, management policy is guided by the firm's desire to pursue company objectives that may have very little to do with union status. Personnel practices are influenced, for example, by the productivity of the firm and by quality goals. These patterns are only ideal types, so some firms may contain elements of one or more patterns.

The Paternalistic Pattern

In the **paternalistic pattern of labor relations**, personnel policies tend to be administered informally, with substantial discretion on the part of operating managers. For example, a paternalistic firm might offer no formal leave and sickness policies, but its supervisors will grant paid leaves on a case-by-case basis. Supervisors and other managers in these firms make decisions about other discipline and pay policies. The employment conditions of employees in these firms differ substantially across work groups, plants, and firms.

This pattern is common among small retail stores, such as grocery stores and gas stations, most start-up firms, and small manufacturing plants.[2] Managers in firms that follow this pattern like their ability to make decisions about informal policies. Often these firms are family owned or operated and family members personally direct personnel policies. Family owners dislike losing control over decisions and particularly fear the loss of control that would occur if unions represented employees. Union avoidance is often a prime policy objective in the firms that follow the paternalistic pattern.

Table 5.1 Union and nonunion labor relations patterns

	Nonunion			*Union*		
	Paternalistic	*Bureaucratic*	*Human resource management*	*Conflict*	*New Deal*	*Participatory*
Rules	Informal	Formal	Flexible	Inflexible	Formal	Flexible
Management style	Managerial discretion	Rule bound	Strong corporate culture	Aggressive	Adversarial	Involvement
Complaint procedure	None	Written policies	Ombudsman	Excessive delays	Grievance system	Continuous problem solving
Work organization	Low skill	Detailed classifications	Teams	Detailed classifications	Detailed classifications	Teams
Employee payment procedure	Piece rates	Job evaluation	Pay-for-skills and performance-based pay	Standard rates	Standard rates	Pay-for-knowledge and contingent pay
Job security	Temporary work	Cyclical insecurity	Career development	Unstable	Seniority-based layoffs	Employment security
Worker-manager relations	Hierarchical and personal	Hierarchical	Individual	Combative	Arms-length	Overlapping roles

The Bureaucratic Pattern

Larger firms find the diversity in personnel practices that is common in paternalistic firms too unsettling and costly. In their efforts to achieve economies of scale, larger firms find it advantageous to standardize and bureaucratize personnel policies. This is known as the **bureaucratic pattern** of personnel administration. Managers in these firms have also come to realize that variation in policies can spur unionization if some employees believe that other employees in the firm are benefiting from more favorable policies.

The bureaucratic pattern is characterized by highly formalized procedures, such as clear (and typically written) policies on pay, leave, promotion, and discipline. Firms that follow the bureaucratic pattern also use highly detailed and formalized job classifications and job evaluation schemes to determine pay levels and job duties. Examples of firms that follow this pattern include most of the large nonunion corporations that expanded in the post–World War II period such as Sears and the Bank of America.

The Human Resource Management Pattern

In the 1950s, as an outgrowth of their efforts to increase flexibility and cost competitiveness while maintaining their nonunion status, some firms began to adopt a new pattern of personnel policies.[3] The **human resource management** (HRM) **pattern,** like the bureaucratic pattern, relies on formal policies, but the nature of those policies is different from those traditionally found in nonunion firms. The HRM pattern includes policies such as **team forms of work organization, skill- or knowledge-based pay,** and elaborate communication and complaint procedures. Downsizing has become commonplace in general, and both white- and blue-collar employees have become subject to involuntary termination. HRM firms also use voluntary severance programs to reduce employment levels. These firms continue to subsidize employee training and career development but warn employees that their individual career development might require them to find new employers. In effect, employers are forcing employees to take on more of the risk and instability associated with the modern economy.

Like the firms that follow the other nonunion patterns, HRM firms vigilantly try to avoid unionization. They differ from other nonunion firms in the great extent to which they consider union avoidance questions in decisions such as where to locate a new plant or store. These firms also take unusually extensive steps when they design other personnel policies, such as complaint and communication policies, to support their avoidance of unions. In their efforts to avoid unions, as in so many of their personnel policies, HRM firms spend relatively more on personnel practices and try to coordinate their various policies both to improve economic performance and to stay nonunion. HRM firms also are noteworthy for the extensive measures they take to induce employees to identify their interests with the long-term interests of the firm. Those measures include publishing company newsletters, offering salaries to all employees, and nurturing a strong corporate culture. To increase flexibility in work practices and facilitate communication with employees, some companies use employee committees.

Among the best-known examples of companies that use some or all of these practices successfully are Apple, Google, IBM, Procter & Gamble, Delta Airlines, DuPont, and Michelin Tire.[4] Marriott Hotels is an example of a company that has been relatively successful using these strategies in more competitive environments and with a less-skilled work force.[5]

The Role of Business Strategy in Shaping Nonunion Patterns

Several factors influence which of these patterns nonunion firms follow. The values and strategies of management play an important role. For instance, many of the HRM firms had a strong founding executive who helped initiate a strong corporate culture.[6]

Business strategy also makes a difference. The HRM pattern seems to provide more flexible and more adaptable work organization through its use of team systems and skill-based pay.[7] These characteristics are particularly attractive to firms with rapidly changing technologies and markets. Thus, it is no surprise that many firms in high-technology industries follow the HRM pattern.

Small steel mills illustrate how business strategy is linked to personnel practices. The small nonunion mills that produce a wide variety of products ("market" mills) and those that concentrate on high-quality products tend to follow the sophisticated HRM pattern, while those that pursue a low-cost and high-volume product strategy tend to follow a variant of the bureaucratic pattern.[8]

In sum, companies with sophisticated personnel systems are most likely to be those that have an environment of growth, high profits, large-scale operations, and employees with sufficient skills to warrant large investments in human resource management. They must have highly trained personnel staffs to effectively monitor employee attitudes and the personnel practices of other firms.

Union Patterns of Labor Relations

Labor relations policies also follow distinct patterns in firms where at least some of the employees are unionized. Three union patterns currently dominate.

The New Deal Pattern

The form of collective bargaining in the United States that dominated until the 1980s (and continues in most unionized firms) is the **New Deal pattern,** which is characterized by highly detailed and formal contracts. This pattern includes **grievance arbitration**, seniority-based layoff procedures, numerous and detailed **job classifications,** and standardized pay rates.

The advantage to this pattern is that it is very good at providing stable labor relations. Some of that stability derives from the formal channels (such as the grievance procedure) for addressing problems. These procedures are attractive to employees because they provide due process (see Chapters 3 and 11).

A subsequent section of this chapter examines the diversity that can exist across plants that follow this New Deal pattern. Despite this diversity, firms that follow the New Deal pattern are clearly distinguished from the unionized firms that

follow the other two patterns of collective bargaining: the conflict pattern and the participatory pattern.

The Conflict Pattern

In the **conflict pattern,** labor and management are engaged in a serious struggle over their basic rights. Often the issue in dispute is whether there will be union representation. The conflict pattern typically involves prolonged strikes. In some cases, employees resort to sabotage or absenteeism to express their anger against employers.

Conflict imposes high costs on the firm through lost output or low productivity. It also imposes costs on employees in the form of lost earnings. Because of the high costs to both parties of engaging in intense conflict, the conflict pattern tends not to be sustainable. The conflict pattern arises most often when a firm is trying to move from a union to a nonunion pattern or when a union is trying to unionize a nonunion firm.

Caterpillar Corporation and the unions that represent its employees were caught in a cycle of conflicts during the post–World War II period. Box 5.1 describes these events. A conflict pattern emerged at Caterpillar even though the United Auto Workers and the International Association of Machinists, the unions that represent workers at Caterpillar, had good relations with many of the other employers it negotiated with, including John Deere, Caterpillar's most direct domestic competitor.

BOX 5.1
Conflictual Labor Relations at Caterpillar

Based in Peoria, Illinois, Caterpillar is the state's largest manufacturer and the world's leading builder of heavy equipment. Since the early 1990s, Caterpillar and the unions that represent its employees, the UAW and IAM, have experienced difficult labor relations. Caterpillar has pressed for and won significant concessions from its unions and its work force, including the introduction of a lower tier of pay for newly hired workers, successive increases in the contributions employees make to health insurance, and the freezing of the company's defined benefit pension plan and the replacement of the plan by a 401(k) contributory plan. In some rounds of bargaining, the unions made these concessions only after long strikes. The level of conflict in one of those strikes was particularly intense when the company threatened to hire permanent replacements for striking workers.

A History of Labor Conflict at Caterpillar

Caterpillar faced nine strikes in the period 1948 to 1992, all of them short, with minor repercussions. Then in November 1991, a difficult impasse

developed after Caterpillar vowed not to follow the traditional pattern that prevailed in collective bargaining in the agricultural implements sector. Caterpillar refused to follow the terms the UAW had won in a contract with John Deere & Co. The company's refusal to agree to pattern bargaining prompted a host of wildcat strikes. In response, Caterpillar instituted a lockout, contending that it was in a strong position to operate with temporary, white-collar, and retired workers. Misperceiving the company's ability to operate, all 14,000 UAW members walked out in February 1992.

The union believed that the February 1992 walkout would be settled quickly. However, the company countered with the threat that it would replace striking workers with new permanent workers. Caterpillar began advertising for workers shortly after the strike began. Not willing to lose their jobs over pattern bargaining, strikers returned to work in the spring of 1992.

Without a contract and unhappy with the course of events, the UAW then launched an "in-plant campaign" of slowdown tactics. The company imposed strict disciplinary actions in response, which led to a second strike in June 1994. During this strike, Caterpillar could not threaten to hire permanent replacements because the UAW had called this strike over the 101 unfair labor practice charges pending against the company with the NLRB. However, Caterpillar continued to operate successfully, and employees worked under the terms Caterpillar unilaterally imposed after the 1992–1994 strikes.

Contentious negotiations followed in 2003–2004, during which UAW leaders urged members not to strike but to remain on the job until a new contract was reached. Eventually a new six-year contract was negotiated and accepted by the work force.

In bargaining cycle of 2011–2012, the UAW and Caterpillar agreed to a new six-year contract after many months of negotiations. UAW workers grudgingly voted to accept the new contract because the contract included a host of concessions on wages and benefits. Workers represented by the IAM at Caterpillar's plant in Joliet, Illinois, initially were not willing to accept those concessions and struck for three and a half months. In the end, those workers voted to accept a contract that included concessions that were similar to those in the UAW-Caterpillar contract for 2011–2017. Thus, although Caterpillar continued to gain concessions from its unions and workers, it did so at the cost of periodic intense conflict during contract negotiations and the creation of a hostile atmosphere of labor-management conflict on the shop floor.

Source: "UAW Members OK Pact with Caterpillar Covering 9,500 Employees in Four States," *Daily Labor Report*, March 7, 2011, A-9; and Alicia Biggs, "IAM Members Ratify Caterpillar Pact Covering 800 Workers at Illinois Plant," *Daily Labor Report*, August 20, 2012, A-7.

Major league baseball also has followed the conflict pattern. Negotiation of new contracts between baseball owners and the Major League Baseball Players Association have nearly or actually involved a strike or lockout in each of the eight contract negotiations that occurred from the 1970s to 2002.

The Participatory Pattern

Some firms and unions have developed a **participatory pattern** of labor relations, characterized by contingent compensation systems (systems that link pay to the economic performance of a firm or work group), team forms of work organization, employment security programs, and more direct involvement by workers and unions in business decision making.

The participatory pattern tries to create mechanisms through which workers can directly solve production and personnel problems. Quality circles or team meetings are used to facilitate direct discussions between supervisors and workers in many firms. In these firms, workers also are called on to become involved in business decisions such as scrap control or issues concerning how best to implement new technology. Not all organizations that set out to create greater participation by employees, however, end up with more employee participation. These failures occur for several reasons, including the resistance of supervisors or employees change. This pattern is discussed more fully in Chapter 11. Southwest Airlines has successfully used this pattern from its founding in the 1970s to today.[9]

MANAGEMENT ATTITUDES TOWARD UNIONIZATION

What factors influence whether management follows a union or a nonunion pattern? In part, the decision is a function of management's attitudes toward unionization. In the history of the labor movement in the United States, there are many examples of bloody organizing struggles and attempts by employers to reduce the incentive for employees to join unions. Although the level of bloodshed has declined and the strategies employers use to oppose unionization have become more subtle over the years, management's opposition to unions continues to be very strong.

Douglas Brown and Charles Myers aptly described the sentiments of perhaps the majority of U.S. management executives in an article written in the mid-1950s: "It may well be true that if American management, upon retiring for the night, were assured that by the next morning the unions with which they dealt would have disappeared, more management people than not would experience the happiest sleep of their lives."[10] Yet even given the tenacious hold of this sentiment, some firms place a lower priority on remaining nonunion than others. Some employers have been pragmatic enough to recognize that in their situation it is either impossible to avoid unionization or the costs of attempting to avoid unions outweigh the potential benefits. These employers tend to be less aggressive about resisting unions. Thus, the intensity of employers' resistance to unionization and the strategies they have used to remain nonunion have varied across firms and over time. Two union avoidance strategies stand out.

The Historical Evolution of Two Union Avoidance Strategies

As early as the 1920s, employers were using two different strategies to avoid unions: the direct **union suppression** approach (actively resisting any organizing drives); and the indirect union substitution approach (removing the incentives for unionization). Why do some firms use the first strategy while others try the second?

The strategies employers use to avoid unionization are to some extent a function of the firm's financial resources. If a firm can afford the specialized personnel and employee relations staff necessary to implement the strategy, it will use the union substitution approach. Firms that are unable to absorb the expenses associated with the substitution approach tend to oppose unions by using direct suppression strategies.

Environmental factors also influence whether and how management responds to the threat of being unionized. Factors that tend to lead management to a suppression strategy include the presence of a hostile political environment toward unions, the employment of low-wage workers who have few labor market alternatives, an abundant supply of alternative workers, low recruitment costs, and a low-profit, highly competitive industry.

As we discuss more fully in Chapter 12, in recent years a number of firms have instituted peer review and other complaint procedures as part of a union substitution strategy.[11] These forms of nonunion employee representation have significant potential advantages for management because they can be designed to avoid the danger of violating section 8(a)(2) of the National Labor Relations Act, which states that some other forms of nonunion employee representation that employers establish and dominate are illegal.

Increased Union Suppression

There is some evidence that the use of union suppression tactics has increased in the past forty years. NLRB case records show that in recent years about one in twenty workers who vote to unionize have been illegally fired.[12] Thus, management's use of suppressive tactics against union activists is not merely an artifact of pre–New Deal labor history but a significant feature of contemporary labor relations.

At the same time, some firms continue to reduce employee incentives to unionize through the substitution strategy. Many workers reluctantly turn to unionization only after they have exhausted all other ways of influencing the policies of their employer. Many firms try to use human resource policies to meet the needs of employees before workers become frustrated enough to turn to a union. Although many firms that institute sophisticated human resource policies do so for business reasons and not just to avoid unions, these policies have the effect of decreasing the incentive to unionize.

In many firms, some parts of their business are unionized while other parts are not and in those firms the proportion of the establishments operating nonunion has increased greatly since 1990.

A firm's opposition to unionization is also influenced by a factor that is difficult to measure: the philosophy of the top corporate executives. These are the individuals who make the ultimate decisions about how hard a line to pursue against unions. Although their decisions are based in part on the potential economic costs and benefits of avoiding unionization, they are also based on the executives' personal views of unions. The contrast between U.S. employers and some of their European counterparts is evident, and it is often argued that European employers are less anti-union than their American counterparts.

INTERNAL MANAGEMENT STRUCTURES FOR COLLECTIVE BARGAINING

This section considers how management structures itself in a firm to engage in collective bargaining. This is an important consideration for firms where at least part of the work force is represented by unions.

Management's collective bargaining structure has three main characteristics: the size of the labor relations staff in relation to the number of employees in the company, the degree of centralization in decision making about labor relations issues, and the degree of specialization in decision making about labor relations. The latter concerns the extent to which decision-making power is placed in the hands of the labor relations staff instead of in the hands of the operating (or line) managers.

The term **labor relations staff** refers to staff who are responsible for handling union-organizing attempts, negotiations, **contract administration,** and litigation related to union activity. The term does not refer to the personnel staff who handle recruitment, staffing, equal employment opportunity, safety and health, and wage and salary administration issues. Most firms now integrate personnel and labor relations activities in a human resource management unit.

Management staff must formulate labor relations strategies.[13] After basic strategic decisions are made, they must be implemented on a day-to-day basis. Management must allocate responsibility for decisions in a manner that allows the company to adapt to new pressures from the external environment. In short, management must develop a structure that enables the firm to bargain effectively and to manage its day-to-day relationship with the union.

When a firm's business strategy changes, there should be corresponding changes in management structure. This has been happening in recent years. As firms have shifted to business strategies that include tight cost controls, power has shifted from labor relations staff to line managers and human resource specialists.

Data from several surveys reveal the following common management labor relations structures.

The Size of the Labor Relations Staff

Most surveyed corporations have labor relations staff at the plant, division, and corporate headquarters levels. Nevertheless, the number of staff members these corporations employ in relation to the number of unionized employees varies

greatly. Larger labor relations staffs exist in firms where unions have significant bargaining power due to their strike leverage or a low elasticity of demand for labor.

Centralization in Decision Making

In general, responsibility for labor relations policy is highly centralized in firms. In most firms, employees at the corporate level have primary responsibility for developing union policy, either the top labor relations executive or the chief executive officer.

The corporate labor relations executive also typically has primary responsibility for developing union avoidance activities, responding to union-organizing campaigns, conducting contract negotiations or advising negotiators, drawing up the final contract language, assessing the costs of union proposals, and doing the general background research for bargaining. Only the administration of the contract and general troubleshooting activities tend to be decentralized to the division or the establishment level.

The top level of the corporation also plays a very active role in reviewing and approving major policy decisions about bargaining. In most firms, the top executive has to at least review and approve key decisions. In some firms, the chief executive even has primary responsibility for making the crucial decisions that establish the limits of discretion for the management negotiators, determining the issues over which the firm should take a strike, and approving the final package. In companies or industries in severe financial distress, chief executives take on more direct roles in shaping labor relations policies and often become directly involved in communicating with the work force or in negotiating concession agreements.

Specialization of the Labor Relations Function

There is evidence that power has shifted downward within management structures in recent years. Labor relations specialists have been losing power to line managers and, to a somewhat lesser degree, to human resource specialists. The main reason for this is that firms now have less need for the traditional expertise of the labor relations specialists who focused on zachieving stability, labor peace, and predictability. Instead, firms want expertise in union avoidance, cost control, and flexibility in work rules, and achieving these goals requires changes in workplace practices.

This does not mean that labor relations specialists are no longer necessary. Indeed, case studies reveal that lower-level labor relations managers secretly delight in the "mistakes" some of the line managers and human resource management specialists make as they take greater control over critical labor relations decisions. In one large firm, a career labor relations manager told us the story of how the new vice-president of labor relations who was transferred from another functional area had to call in the "old hands" to find out how the contract ratification procedures worked.

As a result of their continuing need for technical expertise, most firms continue to depend on teams of labor relations specialists to conduct negotiations and implement policies and agreements. Some major firms have established strategic

planning groups for labor relations and others have used cross-functional teams to develop new bargaining proposals.

The careers of labor relations professionals are changing dramatically and thus require new types of education and training. The labor relations professionals of the future will need the following:

1. Business, analytical, and planning skills
2. Expertise in both traditional labor relations activities and personnel or human resource management activities
3. A thorough understanding of business finance.
4. The ability to work as a member of a multidisciplinary team in implementing labor relations strategies and policies
5. Skills in managing innovative labor-management **organizational change** efforts
6. Expertise in web-based communications and service delivery

Corporate Restructuring and Governance

In recent years, corporations have increasingly moved toward a "core competency" business model. In this model, the functions that are central to the core business processes of the firm remain inside the firm and other functions are outsourced. This trend has affected labor relations in two ways. First, and most important, many firms have outsourced their production operations, and this has often had the effect of reducing the number of unionized employees. One of the important tasks labor relations professionals are periodically called on to do is negotiating the issues involved in outsourcing production work and employees.

The second effect of recent corporate restructuring has been the outsourcing of many of the human resource services that had previously been provided in house. Many companies have outsourced training, benefits management, payroll, and other routine employee services. This has reduced the number of career advancement opportunities for human resource professionals, including those who serve in the labor relations function. As a result, labor relations professionals now spend an increasing amount of their time negotiating and coordinating employment practices with external human resource service providers. Corporate labor relations roles are also changing in response to the increased global activities of most firms, a topic we address in Chapter 14.

Summary

Most U.S. employers accept the general principle that unions provide value to American society yet they aggressively avoid the expansion of unionism. Although managers accept in the abstract the principle that unions have a legitimate role to play in a democratic society, in practice managers continue to act on the belief that unions are either unnecessary or undesirable in their own company.

Most managers are pragmatic about unionization, however. If the costs of union avoidance are too high—that is, if unions are too powerful and management realizes that they cannot be avoided—management will work with union leaders

to develop the strategies a company needs to be competitive. Many firms have been able to pursue two strategies simultaneously: They avoid further unionization in one location in the firm while they cooperate with the existing union at another. It remains to be seen if management will continue to enjoy such discretion and power in the years ahead.

Firms generally follow one of six labor relations patterns: paternalistic, bureaucratic, human resource, conflict, New Deal, or participatory. For each of these patterns there is a set of basic personnel policies. Which of these patterns a firm prefers is, in part, shaped by the firm's business strategy.

When some of a company's employees are unionized, management turns to its labor relations staff to represent its interests in collective bargaining. These staffs vary in size, centralization, and specification.

The nature of the labor relations task is changing. This is because the structure of corporations is changing and the scope of which work is performed within corporate boundaries and which work is outsourced to specialized firms is changing. Labor relations work is shifting from a primary focus on interactions with unions to a focus that requires considerable cross-firm negotiations, coordination, and administration. Current debates about corporate governance may portend future changes in the knowledge base, skills, and activities of labor relations professionals.

Management makes strategic choices in its relations with unions, including decisions about how to aggressively resist the expansion of union representation and how to relate to existing unions that represent employees in a firm. Management's strategic labor relations choices appear to be influenced by the business strategy the firm is pursuing. Management's strategic choices also are strongly influenced by the strategies unions choose. If the union that management must bargain with prefers a confrontational approach, for example, it is unlikely that management would then choose to promote a participatory pattern of labor relations. The next chapter considers the structure of unions and the strategies they use.

Discussion Questions

1. Briefly describe the nonunion labor relations patterns found in Table 5.1.
2. Describe the union patterns of labor relations found in Table 5.1.
3. Contrast the two primary union avoidance strategies management uses.
4. Describe the three key aspects of the structure of a management's labor relations staff.

Related Web Sites

IBM:
http://www.ibm.com/ibm/responsibility/governance.shtml

Delta Airlines:
http://www.delta.com/content/www/en_US/about-delta.html

Caterpillar:
http://www.caterpillar.com/en/company/governance.html

Suggested Readings

Bendix, Reinhard. *Work and Authority in Industry*. New York: John Wiley, 1956.

Chandler, Alfred D., Jr. *Strategy and Structure*. New York: Anchor Books, 1966.

Foulkes, Fred. *Personnel Policies of Large Nonunion Companies*. Englewood Cliffs, N.J.: Prentice Hall, 1980.

Harris, Howell. *The Right to Manage*. Madison: University of Wisconsin Press, 1982.

Jacoby, Sanford. *Modern Manors: Welfare Capitalism since the New Deal*. Princeton, N.J.: Princeton University Press, 1997.

Notes

1. Topologies of labor relations patterns with some similarities to this scheme are provided in Richard C. Edwards, *Contested Terrain* (New York: Basic Books, 1979); and Alan Fox, *Beyond Contract: Work, Power and Trust Relations* (London: Faber and Faber, 1974).

2. See Peter Doeringer, "Internal Labor Markets and Paternalism in Rural Areas," in *Internal Labor Markets*, ed. Paul Osterman (Cambridge, Mass.: MIT Press, 1984), 271–289.

3. This sophisticated human resource management pattern that a few nonunion firms developed in the 1950s had roots in earlier corporate policies of the 1920s (often labeled welfare capitalism; see Chapter 2).

4. Delta Airlines is not a pure case of this nonunion pattern because its pilots are unionized.

5. For a history of the personnel policies followed by Sears, see Sanford M. Jacoby, *Modern Manors* (Princeton, N.J.: Princeton University Press, 1997).

6. For evidence on the role of the founding executives, see Fred Foulkes, *Personnel Policies in Large Nonunion Companies* (Englewood Cliffs, N.J.: Prentice Hall, 1980).

7. Thomas A. Kochan, Robert B. McKersie, and John Chalykoff, "The Effects of Corporate Strategy and Workplace Innovations on Union Representation," *Industrial and Labor Relations Review* 39 (July 1986): 487–501.

8. Jeffrey B. Arthur and Suzanne Konzelmann Smith, "The Transformation of Industrial Relations in the American Steel Industry," in *Contemporary Collective Bargaining in the Private Sector*, ed. Paula Voos (Ithaca, N.Y.: ILR Press, 1994), 135–180.

9. For a history of how Southwest Airlines' labor policies fit with the company's business strategy and contributed to its success over the years, see Jody Hoffer Gittell, *The Southwest Way* (New York: McGraw-Hill, 2002).

10. Douglas V. Brown and Charles A. Myers, "The Changing Industrial Relations Philosophy of American Management," in *Proceedings of the Ninth Annual Winter Meetings of the Industrial Relations Research Association* (Madison, WI: IRRA, 1957), p. 92.

11. This section draws heavily from William Roche, Paul Teague, and Alexander J.S. Colvin, eds. *The Oxford Handbook of Conflict Management in Organizations* (London: Oxford University Press, 2014).

12. Richard B. Freeman and James L. Medoff, *What Do Unions Do?* (New York: Basic Books, 1984), 232; and John Paul Ferguson, "Eyes of the Needle," *Industrial and Labor Relations Review* 62 (January 2008): 3–21.

13. Alfred D. Chandler Jr., *Strategy and Structure* (New York: Anchor Books, 1966), 15.

6 Union Strategies and Structures for Representing Workers

THE STRATEGIC CHALLENGES UNIONS FACE

Unions design critical strategies just as management does. Today, the American labor movement faces especially critical strategic choices if it is to reverse its long-term decline and rebuild bargaining power for its members. The key choices involve how to promote the interests of workers through a combination of political channels, collective bargaining, and other types of worker advocacy that are emerging around the country.

Unions must decide whether and how they will pursue political and legislative issues, and they must determine the appropriate mix of federal, state, and local political or legislative activity. Because all unions participate in collective bargaining to some degree, strategic choices must be made about how to represent workers' interests through bargaining and through daily activities at the workplace. For example, unions must decide how much of their resources and energy to devote to organizing new members and how they will structure their internal organization to represent their members.

Unions also make strategic decisions through collective bargaining and other representational activities they pursue. In recent years, these issues have come to have renewed significance—even among well-established unions—as leaders have recognized that current strategies have not been successful in reversing the long-term decline in union membership. Among other things unions are now beginning to consider is whether to develop alternative models for representing and serving workers in their relations with individual employers, when they move across employers, and perhaps even when they move in and out of the paid labor force as their family and life circumstances evolve over time.

No question is more central to unions than membership. Members are the lifeblood of unions and the source of their bargaining power. This chapter traces union membership trends and considers the various theories about why ups and downs have occurred in union membership in the United States and other countries.

It also reviews some of the new approaches unions and other worker groups and coalitions are using to advocate for workers.

UNIONS AND POLITICS

The U.S. labor movement historically has devoted the bulk of its efforts to collective bargaining rather than to political action. In general, American unions have followed a business unionism approach, as described in Chapter 2. Thus, U.S. unions tend to avoid identifying with any overarching political ideology and instead focus on improving members' conditions of employment through collective bargaining. This is certainly evident when we compare U.S. labor to political unionists in other countries.

In the U.S. political system, there is no sizable labor party, as there is in some European countries. In addition, with few exceptions, U.S. unions have not identified themselves with a socialist political platform, another characteristic that is common among many European labor movements. However, researchers continue to debate how fully business unionism is an appropriate characterization of the U.S. labor movement, and contemporary unionists continue to debate the proper role of unions in U.S. politics.

American Unions Do Have a Political Agenda

U.S. unions have historically played an important role as supporters of numerous social welfare programs such as Social Security, Medicare, **Aid to Families with Dependent Children**, and related services for working families in general and for low-income families in particular. Unions were also strong supporters of the 1964 Civil Rights Act and the 2010 Affordable Care Act.

Unions also have been ardent and successful supporters of federal legislation to protect and improve employment conditions. Here the list of federal policies includes the minimum wage, the Occupational Safety and Health Act, the **Davis-Bacon wage procedures**, the Family and Medical Leave Act, and various pension regulations. AFL-CIO unions play an active role in supporting candidates for president and Congress through the activities of the federation-wide and individual union Committees on Political Education (COPE)[1] and various political action committees (PACs). Unions are also an effective force in mobilizing voters in the United States. Historically, they have been one of the most successful "get out the vote" groups in national elections.

U.S. unions are also active in state and local politics, both in the preparation of legislation and in the election of government officials. Some state AFL-CIO and COPE organizations, some community groups tied to unions, and some local unions are very active in state and local affairs.

Labor's Voice in National and Corporate Affairs

In recent years, the AFL-CIO has increased the resources it devotes to assisting candidates for president and Congress who support its positions on labor, trade, and other economic and social policies. While this often has meant that the labor

movement is allied with the Democratic presidential candidate, from time to time Republican members of Congress with strong labor voting records have also received assistance from labor unions in their states.

The AFL-CIO also works with shareholder governance activists to monitor and influence corporate behavior, executive compensation trends, and other practices of both union and non-union firms. For example, in 2002, it went to court following the accounting scandal and bankruptcy at Enron Corporation to get the company's former employees moved from the bottom to the top of the list of creditors in claims against the company. Another unit focuses on building community-industry coalitions to respond to local crises and disasters such as the losses of workers and jobs in New York City following the terrorist attacks on the World Trade Center, Hurricane Katrina in New Orleans, and the poisoning of the water supply in Flint, Michigan.

Labor's Role in Coalition Politics

In recent years, the efforts of the labor movement to build or join coalitions with other groups that support changes in legislation or corporate behavior have increased markedly. A prime example of legislative coalition building is the various state- and local-level campaigns to increase the minimum wage and campaigns to pass "living wage" ordinances that require companies that do business with local governments to pay wages above those required by federal or state minimums. As of 2016, over thirty states have increased their minimum wages above the federal level. Another thirty-four cities and counties have enacted their own minimum wage ordinances, and over fifty localities have some form of living wage policies. To pass these laws, unions have worked in coalition with local religious, ethnic, welfare, and family-centered interest groups. The most highly publicized efforts in recent years have used the slogan "Fight for $15."[2] To date, the cities of Seattle and Los Angeles and the states of California and New York have enacted policies to increase minimum wages in stages in future years to reach this $15 per hour rate.

At an international level, labor has joined with various student groups and NGOs in developing countries to oppose the use of child labor and other violations of human rights. Increasingly, therefore, labor's role in politics goes well beyond formal relationships with national political parties and focuses on more informal issue-oriented coalitions and political campaigns.

Current Debates in Unions over the Appropriate Role of Politics

The debate over the role of politics continues within the U.S. labor movement. Some unionists have recently called for a reorientation of labor's strategy away from its traditional emphasis on collective bargaining and toward political action as the preferred means to achieving labor's goals. One of the most active and influential voices for labor's voice in state and (to some extent) local politics is the Working Families Party, which was founded in New York in 1998 and has chapters in eight other states. Historically, however, various efforts to form a labor party at the national level have had little success.

Labor's role in political affairs likely will take on even greater importance in the future, not as a movement that supports a separate political party but as a builder and participant in coalition politics. These growing roles reflect the view of AFL-CIO leaders that they must represent working people not just as employees but also as shareholders with significant pension investments in corporate equity and as citizens.

UNION GROWTH AND CHARACTERISTICS OF MEMBERS

A central strategic question that faces any individual union and the labor movement generally is how much to use resources to attract and retain new members. Before exploring the factors that influence the growth of the labor movement, this chapter examines current patterns and recent trends in union membership. The data reveal a long-term decline in union membership and illuminate some of the problems with organizing and representation unions in the United States confront.

Union Membership Figures: Where Members Are Located

Figure 6.1 plots union membership as a percentage of the nonagricultural labor force over the period 1930 to 2016. Union membership peaked in the mid-1940s at around 35 percent. By 1960, membership had declined to 31 percent of the

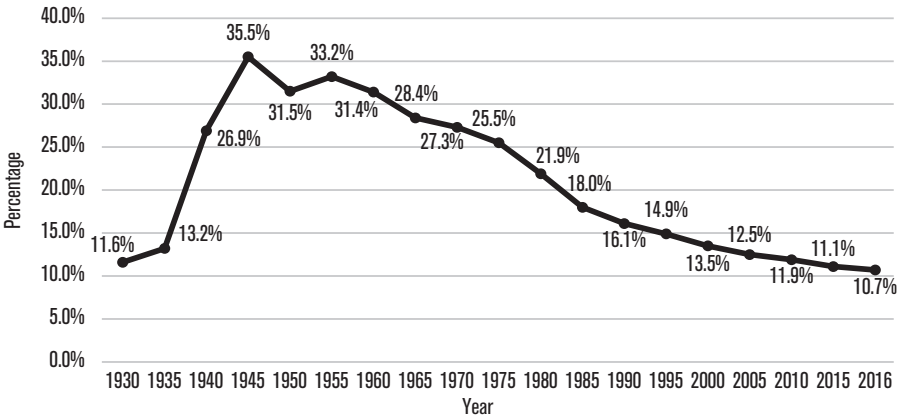

Figure 6.1. Union membership as a percentage of the nonagricultural labor force, 1930–2016

Note: The 1985, 1990, 1995 and 2006 figures are the percentage of employed wage and salary workers in all industries, private and public, who were union members. In 1980, this figure was 23.0 percent

Sources: Thomas A. Kochan, Harry C. Katz, and Robert B. McKersie, *The Transformation of American Industrial Relations* (Ithaca, NY: ILR Press, 1993), 31. The 2015 figure is from "Economic News Release," Bureau of Labor Statistics (Washington, DC, January 2016), USDL-16-0158, Table 1.

nonagricultural labor force, and by 2016 it had declined even further to 10.7 percent.

Union density (also called *union penetration*) varies substantially across industries, occupations, regions, and worker skill categories. The data reviewed below analyze how union membership varies across these dimensions.

Some regions of the United States exhibit higher rates of unionization, while other regions have very low union membership. In 2015, New York had the highest union density in the nation: 23.6 percent of its labor force was organized.[3] At the other end of the spectrum is South Carolina, where union density is 1.6 percent.

Union Membership by Industrial Sector

These figures, however, mask major differences in union membership trends across industrial sectors. Table 6.1 shows union membership data by industrial

Table 6.1 Union membership by industrial sector, 1930–2016 (percent)*

	Sector		
	Manufacturing	*Government*	*Service*
1930	7.8	8.5	2.3
1935	16.4	9.0	2.6
1940	30.5	10.7	5.7
1947	40.5	12.0	9.0
1953	42.4	11.6	9.5
1966	37.4	26.0	n.a.
1970	38.7	31.9	7.8
1975	36.0	39.5	13.9
1980	32.3	35.0	11.6
1983	27.8	36.7	12.9*
1986	24.0	36.0	11.2*
1990	20.6	36.5	10.6*
1995	17.6	37.8	13.5
2000	14.8	37.5	13.2
2005	13.0	36.5	11.6
2010	10.7	36.2	11.0
2016	8.8	34.4	9.6

*Figures for 1983, 1986, 1990 do not include protective services, a heavily unionized group.

Sources: Figures through 1980 are from Leo Troy and Neil Sheflin, *Union Sourcebook* (West Orange, N.J.: Industrial Relations Data and Information Services, 1981). Data for 1983–1986 are from the U.S. Department of Labor, Bureau of Labor Statistics, *Employment and Earnings* (Washington, D.C.: Government Printing Office, January 1985 and January 1987). 1990 data are from U.S. Department of Labor, Bureau of Labor Statistics, "News Bulletin," February 6, 1991, USDL 91–34, table 2. Data for 1995 through 2016 are from Bureau of Labor Statistics, "Union Members in 1995," February 9, 1996, USDL96-41; Bureau of Labor Statistics, "Union Members in 2000," January 18, 2001, USDL-01-21; Bureau of Labor Statistics, "Union Members in 2005," news release, January 20, 2006, USDL-06-99, https://www.bls.gov/news.release/archives/union2_01202006.pdf; Bureau of Labor Statistics, "Union Members—2010," news release, January 21, 2011, USDL-11-0063, https://www.bls.gov/news.release/archives/union2_01212011.pdf; Bureau of Labor Statistics, "Union Members Summary," news release, January 26, 2017, USDL-17-0107, www.bls.gov/news.release/pdf/union2.pdf. Data for the service sector from 1983 to 1990 are from http://www.unionstats.com/.

sector from 1930 to 2016. Although the percentage of unionized manufacturing employees declined from 42.4 in 1953 to 8.8 in 2016, the percentage of government employees in labor unions rose over the same period from 11.6 to 34.4. Thus, the explosion of unions in government employment during the 1960s and 1970s contrasts starkly with the decline in manufacturing unionization.

Unionization in the **service sector** followed a different pattern. As Table 6.1 shows, the percentage of service workers who were unionized rose from 9.5 in 1953 to 13.9 in 1975, but by 2016, it had decreased to 9.6.

Union Membership by Occupation

Union membership also varies by occupation. Table 6.2 presents estimates of the percentage of employees in major occupational groups that were members of trade unions in 2016. The highest rate of membership is in professional services. Within this broad occupational classification, those who work in police and firefighter protective services and education professionals are the most highly organized (approximately 35 percent). Among blue-collar workers, the more highly skilled installation, maintenance, and repair workers (14.7 percent) and semiskilled workers (12.6 percent of production workers) are the most organized.

Among white-collar workers, professional occupations were the most organized, at 16.8 percent. Many of the unionized workers in those occupations were in the public sector, such as public school teachers, police, and firefighters. Service workers were less organized (10.6 percent).[4] Although unions still have not penetrated very deeply into the white-collar occupations, white-collar unionists account for an increasing percentage of all union and association members. An interesting recent development (described in Box 6.1) is growing unionization among doctors as they face a loss of independence and fiscal pressures from the shift to HMOs.

Table 6.2 Percentage of unionized workers by occupation in 2016

Occupation classification	*Percent unionized*
White-collar workers	
Executive, administrative, and managerial	4.6
Professional	16.1
Sales occupations	3.1
Service occupations	9.6
Blue-collar workers	
Installation, maintenance, and repair	13.3
Production	11.8
Farming, forestry, and fishing	2.2

Source: Bureau of Labor Statistics," *U.S. Department of Labor*, "Union Members-2016,http://www.bls.gov/news.release/pdf/union2.pdf.

BOX 6.1
Doctors Form Unions

The trend in the health care industry concerning doctors' unions has many parallels with trends in other sectors. As an industry shifts from being dominated by predominantly self-employed entrepreneurs to large agglomerated employers, professionals who once worked with autonomy begin to feel the constraints of the search for efficiencies. This process, which accelerated in the health care industry in the beginning of the 2000s and continued through the inception of Obamacare, has encouraged doctors and other health care workers to seek the security and stability of a union.

This transformation perhaps began with the rise of "hospitalists." These doctors work regular hours in hospitals instead of maintaining their own office and making hospital visits as necessary. While this practice is obviously more efficient, it created the opportunity for even more profitable efficiencies. Hospitals have begun to outsource the management of these hospitalists to large management firms. Although these firms sometimes pay higher salaries than hospitals, doctors see them as threats to the autonomy they consider essential for their profession.

The main apparent threat is a pressure to see more patients in a day, which allows the hospital to service more patients and make larger profits. Concerned doctors fear that this pressure will detract from the care they would like to offer each patient and will transform their job into an assembly line type of operation.

In response, doctors facing outsourcing have threatened to form traditional bargaining unions. While many doctors belong to the American Medical Association, it is a licensing organization, not a union. The AMA attempted to create a resource to help doctors with negotiations in the late 1990s, but it eventually failed.

The largest group to have joined a union to date is interns and residents—doctors in the final phases of their training. The Committee of Interns and Residents (CIR) gained its first bargaining rights in New York City public hospitals in 1958. In 1997, the CIR joined the Service Employees International Union, and now it represents approximately 14,000 interns and residents in six states and the District of Columbia.

Sources: David Leffell, "The Doctor's Office as Union Shop," *The Wall Street Journal,* January 29, 2013; Noam Scheiber, "Doctors Unionize to Resist the Medical Machine," *The New York Times*, January 9, 2016; CIR, "We Are 14,000+," http://www.housestaffunion.org/who-we-are/.

Union Membership by Demographic Group

Union membership levels also vary by demographic characteristics. In 2016, 11.2 percent of all men and 10.2 percent of all women were members of unions.[5] The number of female unionists as a percentage of all union members has been increasing steadily since 1960 and now accounts for just under half of all union members.[6] Black workers are more likely to be members of unions than whites are. Bureau of Labor Statistics figures for 2016 indicate that 13.0 percent of all black workers were union members, compared to 10.5 percent of all white workers.[7] Hispanics have the lowest unionization rate at 8.8 percent. Union membership is highest among workers 45 to 64 of age, at 13.3 percent.

A majority of union members belong to a few of the large unions. Table 6.3 shows that in 2014, the six largest unions in the country were the National Education Association (NEA); the Service Employees International Union (SEIU); the United Food and Commercial Workers Union (UFCW); the American

Table 6.3 Membership in individual unions, selected years, 1930–2014 (in thousands)

	1939	*1960*	*1979*	*1983*	*2000*	*2004*	*2014*
National Education Association (NEA)	0	0	1,594	1,444	2,530	2,679	2,963
Service Employees (SEIU)	62	269	597	644	1,374	1,603	2,000
Food and Commercial Workers (UFCW)	66	364	892	1,203	1,380	1,359	1,031
State, County, and Municipal (AFSCME)	27	195	942	955	1,300	1,350	1,277
Teamsters	442	1,481	1,975	1,616	1,402	1,328	1,306
Teachers (AFT)	32	56	452	457	707	816	1,120
Laborers	158	443	537	461	818	744	239
Electrical Workers (BEW)	136	690	922	869	728	683	564
Machinists (IAM)	178	687	735	540	731	627	570
Auto Workers (UAW)	165	1,136	1,520	1,026	672	625	400
Communications (CWA)	71	269	523	578	500	557	447
Carpenters and Joiners	215	757	727	678	534	523	n.a.
Steelworkers (USW)	225	945	1,205	694	612	512	412
Clothing and Textile (UNITE)*	240	273	316	251	220	440*	242
Operating Engineers	58	282	452	436	379	391	280
Plumbers	61	261	338	329	307	325	220
Paperworkers	0	0	269	234	311	263	n.a.
Postal Workers	0	0	263	226	316	239	220
Hotel and Restaurant	221	435	398	344	249	n.a.	n.a.
Musicians (AFM)	127	260	274	219	105	n/a	7

*Now UNITE-HERE.

Sources: Data for years prior to 2006 are from Courtney D. Gifford, *Directory of U.S. Labor Organizations, 2005 Edition* (Washington, D.C.: Bureau of National Affairs, 2006), 3. 2014 figures except for those for NEA, SEIU, Teamsters, and IAM are from *2015 Union Membership and Earnings Data Book* (Washington, D.C.: Bureau of National Affairs, 2015). Figures for the NEA, SEIU, Teamsters, and the IAM are from Union Facts, https://www.unionfacts.com/union.

Federation of State, County, and Municipal Employees (AFSCME); the International Brotherhood of Teamsters; and the American Federation of Teachers. The fastest-growing unions in the country since 1970 have been public sector unions (where union growth did not occur through mergers, that is). When both internal growth and mergers are considered, SEIU has grown the most. The United Steelworkers, and the United Auto Workers, formerly the two biggest unions in manufacturing, have declined the most since 1979.

RECENT DECLINES IN UNION MEMBERSHIP

By 2016, union membership among the nonfarm labor force had fallen to 10.7 percent from its 1945 peak of 35.5 percent. Union membership as a percentage of the work force declined particularly rapidly after 1977 (when it stood at 23.8 percent). This was probably because the most highly unionized industries were hit hardest by the effects of periodic recessions, the declining competitiveness of U.S. manufactured goods on world markets, and the economic and organizational restructuring under way in these industries.

As Table 6.3 shows, from 1979 to 1983 alone, the United Steelworkers lost 511,000 members, the UAW lost 494,000 members, and the International Association of Machinists and Aerospace Workers lost 195,000 members. While union membership in the public sector increased in the early 1990s for some unions, membership declined in the 1990s for many public sector unions, even when the economy expanded.[8]

Although these numbers demonstrate the large magnitude of the decline in unionization, they conceal an even more important characteristic of recent unionization patterns. In the 1960s and 1970s, a significant nonunion sector emerged in many industries that has continued to grow since then. This decline in union membership has been most surprising in industries that have historically been viewed as strongholds of unionism such as mining, construction, and trucking.

What explains this union decline? The next section considers the factors that influence union growth and some general theories that can help guide our analysis of the recent U.S. experience.

Models of Union Growth and Decline

Two categories of factors influence union growth. Union growth is influenced by the state of the economy, which can be categorized as a cyclical factor. In addition, a host of historical, political, and social factors have influenced the organizing success of unions. These factors are often referred to as **structural factors**.

The Cyclical Factor

John R. Commons was one of the first to note that unions grew during economic prosperity and declined during economic downturns.[9] In the latter half of the nineteenth century, union membership and the number of national unions rose and fell in sync with changes in the business cycle.[10] Commons posited that

as labor markets tightened during an upturn in the economy, workers became more aggressive in pursuing their goals and employers became less resistant to collective efforts by their employees. Tighter labor markets gave workers more bargaining power and thereby increased the payoffs for unionization. Because higher profit rates accompany prosperity, employers had more to lose during strikes and unionization drives and thus had fewer incentives to resist unionization.

Analysis of union growth in the United States and in other countries reveals a persistent positive correlation between union membership and the strength of the economy.[11] However, cyclical factors are not the only influences on union growth. Union growth did not rebound in the years following the end of the 1990–1992 or the 2007–2009 recessions, even though these were years of economic expansion.

The Role of Structural Factors

Unions have had difficulty gaining new members in part due to changes that have occurred in the nature and location of jobs. Unions historically have had the greatest success in organizing urban jobs in the east and north-central regions of the country and on the West Coast. However, jobs have been moving away from these regions. Unions also have had the greatest success with middle-aged males in blue-collar occupations. Again, the trends have worked against unions: it is the service and white-collar sectors that have expanded and young and female workers who have entered the labor force in growing numbers. Statistical tests suggest that roughly 40 percent of the decline in union membership (as a percentage of the work force) that has happened since the 1970s years can be explained by regional, industrial, and occupational characteristics.[12]

Historical and Legal Influences

Much of the growth in U.S. labor unions happened in a few significant spurts. As Figure 6.1 shows, unionism flourished in the late 1930s and the early and mid-1940s following the end of the Great Depression and the passage of the National Labor Relations Act. This figure illustrates that the most dramatic increases in union growth have happened during times of major social upheavals. Analysts argue that the political climate of the 1930s and the social upheavals caused by the wartime economy gave workers strong reasons to turn to unions.

The Influence of Laws and Public Policy

Union growth and decline also appear to be affected by the legal environment and public policy. It was not the effects of the Great Depression but the support the NLRA gave to collective bargaining that led to increases in unionization in the late 1930s and 1940s. Public sector unionism also grew in a spurt, starting in the early 1960s.

Union membership is low in states that have **right-to-work laws,** and this is another illustration of how public policy can influence union growth. These laws make it illegal to require employees to join unions as a condition of employment (such laws exist in twenty-six states). Since 2011, traditionally strong union

states such as Wisconsin, Michigan, and West Virginia have enacted right-to-work laws.

What happens when a state reverses course and eliminates bargaining rights for most of its state and local government employees? Wisconsin illustrates the effects most clearly. In 2011, over the strenuous objections of a broad spectrum of unions, students, and other coalition forces, the governor and the legislature severely limited collective bargaining for all public employees except police and firefighters. Large public sector unions of teachers and local government employees experienced membership declines of more than 50 percent. Likely due in large part to the combination of this change in public sector legislation and the passage of a right-to-work statute, union membership in Wisconsin fell from 13 percent in 2011 to 8.3 percent in 2015.[13]

The specific independent effects of a change in law are very hard to separate from changes in the political environment that support such legislative actions. On the one hand, union membership grew fastest in states that passed legislation granting public employee unions the right to bargain collectively in the 1960s and 1970s and declined in states like Wisconsin when these rights were rescinded. On the other hand, an already favorable political climate, the existence of a strong potential for organizing, and, in some cases, the beginnings of union organization in the public sector all contributed to the initial passage of the state laws. A shift to a more conservative set of governors and state legislatures has led to rollbacks of public and private sector union rights. Thus, it is probably safest to conclude that passage of legislation is both partially a cause and partially an effect of union growth.[14]

In summary, union growth in the United States and in other countries is affected by both cyclical economic factors and structural factors. The latter include public policies and major historical and social events.

Declines in union membership in particular regions or occupations did not happen independently of actions management and unions took. The decision to employ workers the South in part reflected employers' decisions to take advantage of the region's lower labor costs and their beliefs that the social and political climate of the South would reduce their vulnerability to unionization. Similarly, unions did not reallocate their organizing resources when employment opportunities began to shift to the service sector; as a result, they missed an opportunity to take advantage of that shift.

Employer Policies: Union Avoidance and Substituting for Unions Using Personnel Policies

There is also evidence that since the 1980s, many employers increased their resistance to unions. The tactics management uses during election campaigns have become very sophisticated. Management's tactics include using consultants, conducting direct discussions with employees, executive speeches during election campaigns, and, in some cases, threats. Management's resistance to unions during election campaigns appears to have contributed to low rates of success for unions in campaign elections.[15] Management resistance to unionization continues in

many firms even after a union wins a representation election. One study finds that when employers oppose unions to the point that employees file an unfair labor practice charge, unions have only about a 10 percent likelihood of navigating through the process and achieving a first collective bargaining agreement. (Remember that the NLRA only requires that managers bargain in good faith; it does not require that a first contract actually be signed.)

Management does not always wait until an organizing election to try to convince its employees that unions are unnecessary. Managers can institute sophisticated personnel practices that function as a substitute, at least in part, for union representation. One of the chief objectives of the human resource industrial relations pattern (described in Chapter 5) is avoiding union representation. One key way such personnel practices differ from the practices managers use to discourage employees from forming a union is the fact that they are permanent. Management may have several reasons for adopting these personnel practices, including the fact that such practices can contribute to the firm's performance and adaptability.

Internal Union Affairs and Actions

Unions may bear some of the blame for their organizing difficulties and for the decline in membership in recent decades. One argument is that American unions have suffered from corruption and that they have been slow to adapt to changing times. Analysts also point to the poor publicity generated by the charges of corruption that historically plagued the Teamsters union or the unions representing workers who work at ports unloading ships as one reason for the low opinion of unions in the minds of much of the public.

Others have argued that unions have done poorly in representation elections because they have not devoted enough resources to organizing. Some critics have argued that labor no longer approaches the task of organizing new workers with the enthusiasm and commitment that characterized the organizing drives of the 1930s.[16] An analysis of trends in union election activity shows that union organizing now produces only a fraction of the number of new union members needed just to offset the number of workers who leave unions when they leave the labor force.[17]

Limitations of the Standard Organizing and Representation Model

There may also be inherent limitations to the traditional approaches unions use to recruit and retain members. Under U.S. labor law, a union needs to convince 50 percent of workers in a potential bargaining unit to join before it gains representation for any worker in that unit. For this to happen, the majority of workers need to be deeply dissatisfied with their employer and/or their working conditions and they must see unions as an effective way to improve their conditions. Moreover, once a worker is organized, he or she is a union member only as long as he or she stays with an employer that has signed a collective bargaining contract.

These features of labor law and union organizing mean that unions must expend considerable resources to organize workers. Membership turnover is a particular

problem. Survey data indicate that there are approximately twice as many former union members as current members. Many individuals move in and out of union status at different points in their working lives.

We will explore the implications of this organizing model and the alternatives to it in more depth in the next chapter. For now, it is sufficient to add it to the list of factors that account for the long-term decline in union membership and representation.

While several potential explanations exist for the long-term decline that has occurred in the percentage of the American labor force that belongs to a union, the best explanation is likely that a combination of these factors is responsible.

UNION STRUCTURES FOR COLLECTIVE BARGAINING

A union needs an appropriate structure if it is to pursue its goals effectively in the collective bargaining process. The structure of a union also directs the internal distribution of power and influence among union decision makers. The next section describes the governance and activities of the AFL-CIO, national unions, and local unions.

The AFL-CIO and the Change to Win Federations

The **AFL-CIO** and **Change to Win** are federations of national unions. The AFL-CIO is the largest labor federation in the United States: its 56 union affiliates represent approximately 12.5 million workers. The Change to Win federation was created in 2006 when seven unions with a combined membership of about 6 million members split off from the AFL-CIO. Since then three of these unions (the Laborers' International Union of North America, United Food and Commercial Workers, and UNITE HERE) have rejoined the AFL-CIO and one has remained independent. In 2016, three unions, the Service Employees International Union, the Teamsters, and the United Farmworkers are part of the Change to Win Federation and represent approximately 3 million workers.

The primary roles of the AFL-CIO are to promote the political objectives of the labor movement and to assist the component unions in their collective bargaining activities. The AFL-CIO promotes the political objectives of unions through political lobbying and disseminating information to union members about political events and elections.

The federation has no formal authority over the collective bargaining activities of its member national unions and only rarely becomes directly involved in them. In recent years, however, the Building and Construction Trades Department and the Metal Trades Department of the AFL-CIO have played a more active and direct role in collective bargaining in selected construction projects and in the federal sector, respectively. From time to time, the federation helps unions build new coalitions to bargain with a major employer. The Coalition of Kaiser Permanente Unions described in Box 6.2 is one example. The staff departments of

BOX 6.2
The Coalition of Kaiser Permanente Unions

In 1995, a crisis was building in the relationship between Kaiser Permanente Health and Hospital Corporation (KP) and the twenty-six local and eight international unions that represent KP workers. Union members and leaders were frustrated with the number of layoffs, KP's demands for wage concessions, strikes, and tensions that increasing competition in health care had produced in relations with KP. The largest single national union at KP, the Service Employees International Union (SEIU), began to discuss its strategy with its local unions and with KP union members. "This was contrary to how we wanted to build relationships and build the industry," recalled Margaret Peisert, then an SEIU researcher and later assistant director of the Coalition of Kaiser Permanente Unions.

SEIU then turned to the Industrial Union Department (IUD) at the AFL-CIO and asked its staff to call a meeting of all the unions representing workers at KP. KP nurses, who were represented by the American Federation of Teachers, joined the SEIU in this request. The IUD had many years of experience with coordinating bargaining efforts, and Peter diCicco, then president of the IUD, welcomed the opportunity to set up a meeting to address the critical problems at Kaiser. Peter diCicco describes how they got started:

> We took our normal approach. We called an initial meeting of all principal unions. More than 100 people attended. We knew from experience that we had to get all the unions on board with a clear strategy for how to deal with Kaiser. It became evident, given the negative attitude of the public toward strikes in health care, [that] we had to consider other options, so we began looking at other means to achieve bargaining strength—corporate campaigns and such. I went to the international unions for a supplemental budget to fund the corporate campaign. They accepted the supplemental budget and we staffed up and started the corporate campaign—a successful one. For example, we found a very negative quality report on KP from one region and began making it public to demonstrate we were ready to move in this direction if we didn't see a change in Kaiser's behavior.
>
> But it became clear to us if we unleashed lots of these data we would lose control of all this. The government might step in and we would all lose. So I went to the international union presidents and told them these guys (Kaiser) are not the worst of employers we deal with, and we might do permanent damage to them and to our 75,000 union members if we mount an all-out corporate campaign or use the information we amassed for short-term advantage or leverage. Was there an alternative? Perhaps we could use our bargaining strength at the table or offer the option of a partnership approach with Kaiser.
>
> We had John Sweeney, who at that time was president of the SEIU (who later became president of the AFL-CIO), make an overture to David Lawrence, (then KP's CEO) and that started the process. It took Kaiser six months to

> consider the idea. The Board of Directors discussed it at length. Fortunately, the former chair of Northwest Natural Gas was on the board and he had [had] a very positive experience with a labor-management partnership in his company. After consulting with him and other board members, Lawrence came back to Sweeney and said, "Let's explore this idea."
>
> The result was the formation of union coalition that went on to negotiate together (see Box 7.10 for a description of these negotiations) to achieve the first nationwide agreement covering all KP union members and to build the largest labor-management partnership ever constructed in the United States.
>
> *Source*: Thomas A. Kochan, Susan Eaton, and Robert B. McKersie, "The Kaiser Permanente Union Management Partnership: The First Five Years," unpublished manuscript, MIT Sloan School of Management, 2002.

the federation offer extensive research and technical support to individual unions or to groups of unions experiencing common problems. In addition, competing unions turn to the federation to arbitrate their jurisdictional disputes.

The supreme governing body of the AFL-CIO is the biennial national convention. The chief officer of the federation is its president, and the most influential policymaking body is the Executive Council. The president, who has significant influence over the Executive Council and the membership, has traditionally been the major source of power in the federation because he or she manages the federation staff and has the authority to interpret the constitution between meetings of the Executive Council.

The Structure of National Unions

National unions are the key bodies and the centers of power in most trade unions in the United States. National unions often are actively involved in the negotiation of collective bargaining agreements. National unions also authorize member local unions and provide assistance to them.

Craft versus Industrial Union Structures

Union jurisdiction influences how national unions perform their functions because it determines the range of workers a union can legitimately organize. Two of the most prevalent union forms are craft unionism and industrial unionism. A **craft union's** jurisdiction is limited to workers in a specific trade (such as painters, electricians, or carpenters) or profession (such as teachers, nurses, pilots, baseball players, and firefighters). An **industrial union's** jurisdiction typically encompasses all workers in a firm (such as steel companies, auto companies, and coal mines).

The early U.S. unions were craft unions that were organized in local labor markets. From its formation in 1886, the AFL firmly adhered to the craft union principle for organizing skilled workers. But as labor markets and product markets broadened with transportation improvements and the growth of mass production industries, the need to expand union jurisdictions became evident. Markets began to cross state lines and unskilled workers became a significant part of the labor force, raising serious challenges to the appropriateness of the narrow, craft-based organizations.

In 1935, advocates of industrial unionism, led by John L. Lewis, president of the United Mine Workers, split with the craft union advocates in the AFL and formed what became in 1937 the Congress of Industrial Organizations (CIO). As the large industrial unions grew, corporations and markets continued to expand and centralized bargaining became more popular. All of these factors helped establish the national union as the central or most powerful structure in most industrial unions. In 1955, the AFL and the CIO merged to form the AFL-CIO.

The Governance of National Unions

Most national unions are governed by a constitution and bylaws. Typically, a national union holds an annual or a biennial convention at which officers are elected, rules and bylaws are modified, and policies are debated. The local unions that are branches of the national union send delegates to the national union convention. The number of delegates is often determined by the number of members in the local union.

The elected officers in a national union frequently include a president, a secretary-treasurer, several vice-presidents (each of which might oversee members in various companies or industries), and an executive board. The national union also commonly includes an administrative staff that is appointed by the president.

The staff of a national union implements policies in areas such as organizing, contract negotiation, grievance administration, health and safety, strike and welfare fund administration, and research. One important task these staffs perform is communicating with organizations that are external to the union, such as other national unions, offices of the AFL-CIO, or government agencies. Members of the national union staff are also responsible to provide advice and assistance to local unions in the national union.

The Local Union

For most unionized workers, the most extensive interaction they have with the union that represents them is through their contact with and involvement in a **local union.** An individual employee can participate in local union meetings and vote in the elections that determine local union officers. It is the local union that is involved in the initial processing of a **grievance** and the direction of any strike or picketing activities.

If a local union is not linked to a national union (as is the case in some small manufacturing companies), it negotiates a collective bargaining agreement on its

own. More typically, however, a local union is a branch of a national union and is governed by the constitution or bylaws of the national union. In addition to this formal connection, there is typically extensive contact between local and national union officers, especially during contract negotiations or contract administration.

The Responsibilities of Local and National Unions

In most industrial unionized settings, such as the steel, auto, textile, and mining industries, unionized employees are covered by both a local contract and a contract that is negotiated at the company level. The local union negotiates the local contract and the national union negotiates the company or industry contract.

When both local and higher-level (company or industry) collective bargaining agreements exist, each agreement covers different subjects. The local contract (which might cover either a single plant or all the plants in a company) usually includes issues such as the work rules for job requirements, **seniority rights**, and the wage rates paid for specific jobs. The company or national contract addresses matters such as fringe benefits and the scheduled wage increase over the term of the contract and sets out procedures for the grievance process.

The national union usually assists the local union during negotiation of the local collective bargaining agreement. It might provide an expert in negotiations who advises the local union during negotiations. In some instances, the national union representative directs the union side in local negotiations. The research staff of the national union may provide background information (about other wage settlements in the industry or economic trends) or technical assistance to the local union.

The local and national union staffs often have regular contact during the term of a labor agreement. For example, national staff might provide technical assistance to a local union as it develops or implements health and safety or employee assistance programs. The national and local unions often coordinate their efforts during a union organizing drive. In addition, as we discuss further in Chapter 12, in many unions it is the national union that decides whether an unresolved grievance is pressed to arbitration.

Governance of Local Unions

Local unions typically have elected executive officers, including a president and a secretary-treasurer. Industrial unions frequently also have bargaining chairs and bargaining committees that lead the local union in contractual negotiations. In unions in the construction industry and in some other local unions, a **business agent** directs the local contractual negotiations, handles grievances, and in other ways operates as the chief administrative officer of the local union.

Local unions are funded with the dues unionized employees pay. Typical dues payments average between 1 and 2 percent of members' annual earnings. In large and well-funded unions, the executive officers of the local union will be paid to perform union duties on a full-time or part-time basis. In many locals, the union president is the only full-time paid position and other officers fulfil their union-related duties part time and perform their normal jobs at other times.

While union officers formulate the strategic direction of the local union, for the average worker the most important person who represents the union is the **shop steward.** In a typical union, the steward provides union services at the workplace level to ten to twenty workers. It is the steward that becomes involved most quickly if a grievance or other dispute arises between a worker and a supervisor. In addition, workers often hear about union events or programs from their steward.

Political Life in Local Unions

Local union officers and stewards are chosen for their positions through elections. Many local unions elect officers for two- or three-year terms. Local union elections are frequently highly contested. Typically, many candidates run for union positions. Although there is rarely anything similar to a formal political party in local unions, there are often slates (groups) of candidates who join forces informally during their campaigns for union office.

Union Democracy

How extensive is the amount of democracy inside national and local unions? Although it is difficult to generalize, given the wide diversity that exists in unions, there is much **union democracy.** Union officers are elected regularly through democratic election processes. The election of union officers is clearly more democratic than the way executives in corporations are chosen.

There tends to be greater stability in elections for national union offices than in elections for local union offices. The presidents of many national unions, for example, are often reelected to serve for several terms. Some of the important and colorful figures in U.S. labor history were national union presidents, such as John L. Lewis (in the United Mine Workers), Walter Reuther (in the United Auto Workers), and Andrew Stern (in the Service Employees International Union), who were elected for more than one term. Today two of the largest unions (the United Federation of Teachers and the Service Employees International Union) are led by women presidents, Randi Weingarten and Mary Kay Henry, respectively.

Most unions regularly debate which strategic direction and positions the union should take in contractual negotiations with management, another sign of healthy democratic processes. Formal political parties rarely exist in unions like the national political parties that exist in the United States. Instead, debates and coalitions tend to be formed around specific issues and events.

Union Corruption

Corruption sometimes happens in unions. For many years, for example, there have been allegations that officers in the Teamsters union were linked to organized crime. Box 6.3 discusses the racketeering charges brought against the Teamsters by the Justice Department and how they were settled.

One can also point to corruption in particular local unions as evidence that unions do not maintain purely democratic institutions. Nevertheless, there is

BOX 6.3

Racketeering Charges against the Teamsters Union and the Cycle of Reforms

Scandals and reform cycles have been part of the history of the Teamsters union. Since the 1930s, there have been charges that some the officers of the Teamsters were linked to organized crime. Five of the presidents who have led the Teamsters union since the 1930s have been indicted for criminal charges. Three of those presidents went to prison. In addition, some union officers and challengers to the union leadership were killed under suspicious circumstances.

In the 1980s, the Justice Department of the U.S. government brought a racketeering case against the union. The U.S. attorney filed a complaint in federal court against the union that claimed that at least 200 Teamsters officials had proven or alleged connections to organized crime. The Justice Department and the Teamsters Union settled the racketeering case out of court in 1989. In the settlement, the union (which had 1.6 million members) agreed to elect national union officers by direct member voting in 1991. This replaced the traditional election of national union officers by local union leaders. The settlement also appointed individuals designated by the Justice Department to temporarily oversee the financial operation of the national union and to take over the direction of some of the local branches of the union.

Surprisingly, Ron Carey, formerly the head of the UPS section of the Teamsters, was elected president of the Teamsters Union in the 1991 supervised election along with a slate of other reform candidates. Notably, Carey had received support from Teamsters for a Democratic Union (TDU), and there were high hopes after his election that the Teamsters could put their scandal-plagued legacy behind them.

Carey went on to defeat James Hoffa Jr. by a narrow margin in a 1996 election, but then scandal returned to the union when charges surfaced concerning the fund-raising activities of Carey's administration during the 1996 election. The U.S. District Court, which was still overseeing the union, ordered a rerun of the 1996 election and disqualified Carey from participating in the rerun. Subsequently, Carey was barred from the union for alleged complicity in the illegal financing of his1996 reelection campaign.

In November 1998, after promising that he would restore the strength the union had when his father had been president, James Hoffa Jr. won the court-ordered rerun and assumed the presidency of the Teamsters Union. Hoffa, who pledged to get the federal government out of the union's internal affairs, initiated an anticorruption initiative known as Project RISE (for

respect, integrity, strength, ethics) with the goal of establishing a code of conduct for its members. A key component of Project RISE is an assessment of any links to organized crime.

However, tensions still periodically surface between the Teamsters and the federal government over the continuing implementation of the consent agreement. Hoffa hopes that clean international officer elections, union reforms by constitution, and Project RISE will lead to the end of court and federal oversight of the Teamster's internal affairs.

Sources: "1991 International Officers Election," *Daily Labor Report*, June 12, 1990, A-16; "Decision of Kenneth Conboy to Disqualify IBT President Ron Carey," *Daily Labor Report*, November 18, 1997, D-1-32; and "IBT Negotiating with Justice Department for End to 12-Year Government Oversight," *Daily Labor Report*, May 16, 2001, A-10.

evidence of lively debates inside unions, and nearly all union officers are elected with a democratic process.

The AFL-CIO has continued to update and revise its agenda. At its 2013 convention, AFL-CIO president Richard Trumka called for an aggressive effort to reach out to new groups of workers and to do so in coalition with other worker advocates. (see Box 6.4).

A Servicing Model versus an Organizing Model of Unionism

As the share of the American work force represented by unions continued to decline, a debate surfaced in the labor movement about whether unions needed to shift away from their traditional **servicing model** of representation to an **organizing model**. The traditional servicing model focuses extensively on contract negotiations, contract administration, and the provision of various services to union members. In this approach, the collective bargaining carried out by national and local unions is supplemented by AFL-CIO political lobbying. In the servicing model, relatively modest resources are directed to union organizing. The militancy of union members plays a critical role in strike actions, but usually this is not the case in daily union affairs in unions that are focused on their servicing role.

The organizing model of unionism, in contrast, focuses a substantial share of the activities and resources of unions on organizing. In addition, this approach seeks to involve union members actively in the organizing process and in the internal operation of the union. The mobilization of union members thus is used to spur external and internal organizing. The number of unions that have adopted a full-fledged organizing strategy has been modest.

Union Mergers

One of the key ways a national union can alter its governance structure and form is through a **union merger**. One goal of the AFL-CIO merger in 1955 was to

BOX 6.4
AFL-CIO President Richard Trumka on the Need for New Labor Strategies

"It is time, my friends, to turn America right side up. And to turn America right side up, we need a real working class movement. And if that's going to happen, we—our institutions—have to do some things differently.

We must begin, here and now, today, the great work of reawakening a movement of working people—*all* working people, not just the people in this hall, not just the people we represent today—but everyone who works in this country, everyone who believes that people who work deserve to make enough to live and enjoy the good things in life.

We heard that all over America, workers are organizing in all kinds of ways, and they call their unity by all kinds of names—workers' unions, associations, centers, networks.

We heard that people want to be part of our movement but it's too hard to join—that we have to change so that our unions and our movement are open to everyone—to anyone who wants to join together for a better life. And today we're going to do that.

We heard that we have to change to reflect the times. The AFL and the CIO merged over 50 years ago, before the jumbo jet, before the cell phone, before the internet. We need to organize ourselves in ways that fit with the jobs people do now and how our economy works now.

And finally, we heard we have to make our unity real with action—we have to be able to organize on a large scale, in the workplace and in political life—quickly, efficiently, decisively. And with a strong, independent political voice.

And in everything we do, we have to join together with partners and allies who share our values and our vision for America. An America of shared prosperity. An America where you don't surrender your humanity, your dignity, your rights when you come to work. An America where we honor each individual, while understanding that connecting with each other, supporting each other—solidarity and community—are what give life meaning.

Throughout history, the energy and hopes of young workers have powered progress: If we are going to move forward, we must truly open our doors to the next generation.

If we are going to move forward, we must make our movement and our leadership as diverse as the workforce we speak for.

If we are going to move forward, we must move forward together—immigrants and the children of immigrants."

Source: Excerpt from "Remarks by AFL-CIO President Richard L. Trumka, 2013 AFL-CIO National Convention Keynote, Los Angeles, California," September 9, 2013, http://www.aflcio.org/Press-Room/Speeches/Remarks-by-AFL-CIO-President-Richard-L.Trumka-2013-AFL-CIO-National-Convention-Keynote-Los-Angeles-California.

promote greater rationalization of union structures through the consolidation of member unions.[18]

The main advantage of a union merger is the administrative benefits that accrue from greater economies of scale and the organizing and bargaining benefits that derive from reduced interunion competition and rivalry. Small unions that lack the financial resources and professional expertise to adequately service union members can be absorbed into larger, more richly endowed organizations. Reducing competition among unions in the same industry or occupation can free up resources previously used in fighting with each other to improve collective bargaining or political efforts. And finally, unions whose traditional occupational or craft jurisdictions have eroded can concentrate on helping their members adjust to changes in the external environment by protecting their job security and expending less of their effort on ensuring the institutional survival of the union.

Critics of merger activity, on the other hand, posit that mergers do not necessarily reflect the rational consolidation of outmoded union jurisdictions. Instead, they say, some mergers are simply opportunistic or expansionist in nature and arise out of union leaders' desires for greater memberships, larger treasuries, more stable jobs for themselves, and increased status and power in the labor movement. Critics also question whether mergers increase the effectiveness of unions' administrations or collective bargaining efforts. They emphasize the negative consequences of large-scale unions for union democracy.[19]

In response to financial and other pressures in recent years, some unions have pursued mergers (see Box 6.5). Some small unions merged in an effort to regain bargaining strength and economies in staffing. Other mergers involved larger unions such as the International Ladies' Garment Workers Union and the Amalgamated Clothing and Textile Workers Union, which merged in 1995 to form UNITE. In 2004, UNITE merged with the Hotel Entertainment and Restaurant Employees to create UNITE HERE. Merger activity among unions that represented government workers enabled several of the nation's largest unions, such as AFSCME and the SEIU, to grow when the organized sector of the U.S. work force was declining. In 2016, AFSCME and SEIU announced that these two large unions would be cooperating on several political and community activities. Whether this will lead to a more formal partnership or even a merger remains to be seen.

Changes in technology and the increasing administrative costs of running an effective union are likely to continue to create pressure for union mergers. At the same time, however, the political problems associated with merging two or more autonomous (and often rival) organizations into one body (with, obviously, only one president) will continue to limit the rate of mergers.

As membership declined, some unions entered financial crises and have drastically cut back the size of their staffs in recent years. Thus, some union staff members were facing layoffs, just as the workers in declining industries were.

Unions as Networks

The increased mobility that characterizes workers' careers today, and perhaps will do so even more in the future, has led some to suggest that a new conception

BOX 6.5
Recent Union Mergers

Unions continue to merge for several reasons, usually to increase their bargaining power and influence. Alan Barnes, secretary-treasurer of Paper, Allied-Industrial, Chemical and Energy Workers International Union Local 4367, has said that union mergers create a greater availability of resources and programs related to health and safety, organizing and research, and organization. PACE was created in 1999, for example, following the merger of the Oil, Chemical and Atomic workers and the United Paperworkers International Union. In 2008, PACE merged with the United Steelworkers Union to create the largest multi-industry union of manufacturing employees in the country.

Although rumors have circulated that the National Education Association and the American Federation of Teachers, the two largest organizations that represent teachers, have been contemplating a merger from time to time, no official merger has occurred. However, in July 2001, the two entered a partnership agreement that provided a framework for additional cooperation. In at least one state, New York, these two teacher unions operate as one under the name of the New York State United Teachers.

Sources: "Union Mergers Give Workers Stronger Voice, Union Leaders Tell Labor-Management Forum," *Daily Labor Report*, April 4, 2000, C-1; "Hoffa Vows to Grow Union through Organizing, Mergers," *Daily Labor Report*, March 26, 2002, A-9; and "NEA Approves Partnership Agreement Providing for More Cooperation with AFT," *Daily Labor Report*, July 9, 2001, A-9.

of unions is needed. Unions may need to serve as networking agents for workers as they move through their careers and across various jobs, and even as they move in and out of the paid labor force over the different stages of their family life. This conception reflects the data mentioned above that suggest many workers join unions at some point in their working lives but do not retain their membership.

Moreover, other data suggest that workers form their views of unions at an early age. If they are not recruited to join unions early in their careers, it is difficult to interest them in joining later on. To combat this dynamic, unions will need to see themselves as full-service labor market institutions that provide representation services through collective bargaining and individual services such as access to lifelong learning, information on job opportunities, and portable fringe benefit and pension coverage when majority status for bargaining purposes has not been obtained. It would also require significant changes in union structures. Unions would need stronger community or regional structures to support mobility and continuous service to individual members.

Whether or not this alternative view of unions gains momentum, it is clear that some strategy that goes beyond simply putting more resources into the traditional strategies and structures for organizing and representing workers will be needed if there is to be a significant revival of American unions.

Summary

The union membership figures reported at the beginning of this chapter highlight one of the central challenges unions face today. Unions' share of the U.S. labor force have declined substantially since the early 1950s. In addition, nonunion firms have made inroads in many industries that were once bastions of union organization. The innovative human resource and union avoidance policies some nonunion firms have adopted, structural shifts in the economy and the labor force, the effects of heightened international competition and trade, and unions' past unproductive and, in some cases, feeble efforts to counteract these developments had contributed to this decline.

Yet the outlook for the labor movement is not completely gloomy. Only a limited number of U.S. workers have benefited from the human resource innovations that serve as a partial alternative to unionization. In addition, many workers lack the long-term attachment to an employer that is necessary to make the new human resource management models work. Today's labor market is characterized by growing numbers of temporary, part-time, or flexible-contract employees and a growing number of professionals who have a greater attachment to their occupation than to their employer. These workers may serve as fertile ground for new approaches to recruiting and retaining union members. Indeed, as will be discussed in more detail in the next chapter, innovative organizing strategies are occurring among groups of workers outside the formal boundaries of the labor movement. How these worker advocates and labor interact may be a key factor in determining whether these new forms grow and find a sustainable footing in U.S. industrial relations.

At the same time, although some workers remain suspicious of union leaders and labor institutions, many appear to be attracted to a system of representation that addresses workplace and strategic issues when such issues have a direct influence on their employment security and working conditions. These unmet needs for workplace and strategic representation have led unions and the AFL-CIO to begin to rethink some of their basic strategies. They also led a rival labor federation, Change to Win, to split off from the AFL-CIO. But whether lasting and deep changes in the organizing and representation strategies of unions follow and whether these changes will be linked to a new union political strategy remain to be seen.

Collective bargaining is the most central activity of unions in the United States, given the business union focus in the American labor movement. At the same time, American unions are active in political affairs. The national unions participate in activities such as political lobbying and organizing drives and they oversee the operation of member local unions.

Unions rely heavily on the participation of their members to elect officers and form their policies and strategies. With few exceptions, there is much democracy in the internal operation of American unions. Democracy is evident in the wide-ranging debates now occurring in unions over how they should respond to membership declines and pressures from the external environment.

Discussion Questions

1. What is the basic union philosophy in the United States? Discuss some of the debates surrounding this philosophy.
2. Various demographic features or characteristics, such as type of occupation, physical location, and other demographic trends, play a large role in union membership. Describe some of these characteristics or features.
3. The text gives several possible explanations for the recent decline in union membership. Briefly discuss these possible reasons.
4. Since the merger of the AFL-CIO, many other unions have merged and consolidated their memberships and structures. What are some of the arguments the proponents use to defend this practice? What are some of the arguments against this practice?

Related Web Sites

AFL-CIO:
http://www.aflcio.org/

Change to Win:
http://www.changetowin.org/

International Brotherhood of Teamsters:
http://www.teamster.org

American Federation of State, County, and Municipal Employees (AFSCME):
http://www.afscme.org

Service Employees International Union (SEIU):
http://www.seiu.org

Bureau of Labor Statistics:
http://www.bls.gov

Suggested Readings

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Notes

1. COPE is funded by voluntary contributions. Its activities include registering voters, efforts to encourage union members and supporters to vote, and circulating information on political matters and pending legislation.

2. David Rolf, *The Fight for $15* (New York: The New Press, 2016).

3. "Table 5. Union Affiliation of Employed Wage and Salary Workers by State," *Bureau of Labor Statistics*, January 26, 2017, https://stats.bls.gov/news.release/union2.t05.htm.

4. The figures for unionism in the service sector reported in Tables 6.2 and 6.3 may appear inconsistent, but they are not. The tables utilize different definitions of "service" work. Table 6.2 reports unionism by industrial sector, whereas Table 6.3 reports unionism by occupation.

5. "Table 1. Union Affiliation of Employed Wage and Salary Workers by Selected Characteristics," *Bureau of Labor Statistics*, January 26, 2017, https://stats.bls.gov/news.release/union2.t01.htm.

6. Ibid.

7. Ibid.

8. See Gary N. Chaison and Dileep G. Dhavale, "A Note on the Severity of the Decline in Union Organizing," *Industrial and Labor Relations Review* 23 (April 1990): 366–373.

9. John R. Commons, *A Documentary History of American Industrial Society*, vol. 5 (Cleveland: Arthur H. Clark, 1911), 19.

10. Lloyd Ulman, *The Rise of the National Trade Union* (Cambridge, Mass.: Harvard University Press, 1958), 4–6.

11. See Orley Ashenfelter and John H. Pencavel, "American Trade Union Growth, 1900–1960," *Quarterly Journal of Economics* 83 (August 1969): 434–448.

12. Henry S. Farber, "The Extent of Unionization in the United States," in *Challenges and Choices Facing American Labor*, ed. Thomas A. Kochan (Cambridge, Mass.: MIT Press, 1985), 15–43.

13. Jason Stein "Union Membership in Wisconsin Plummets in the Wake of GOP Measures," *Milwaukee Journal-Sentinel*, January 28, 2016.

14. Richard B. Freeman, "Unionism Comes to the Public Sector," *Journal of Economic Literature* 24 (March 1986): 42–86; Gregory Saltzman, "Bargaining Laws as a Cause and Consequence of Teacher Unionism," *Industrial and Labor Relations Review* 38 (April 1985): 335–351.

15. Common management campaign election tactics are discussed more fully in the next chapter.

16. See Paula Voos, "Union Organizing: Costs and Benefits," *Industrial and Labor Relations Review* 36 (July 1983): 576–591.

17. Richard B. Freeman, "Why Are Unions Faring So Poorly in NLRB Representation Elections?" in *Challenges and Choices Facing American Labor*, ed. Thomas A. Kochan (Cambridge, Mass.: MIT Press, 1985), 45–64; William T. Dickens and Jonathan S. Leonard, "Accounting for the Decline in Union Membership, 1950–1980," *Industrial and Labor Relations Review* 38 (April 1985): 323–334.

18. For a comprehensive assessment of union mergers, see Gary N. Chaison, *When Unions Merge* (Lexington, Mass.: D. C. Heath, 1986).

19. For a critical view of union mergers, see George W. Brooks and Sara Gamm, *The Causes and Effects of Union Mergers: With Special Reference to Selected Cases in the 60s and 70s* (N.p.: n.p., 1976).

PART III

The Functional Level of Labor Relations

7. Union Organizing and Bargaining Structures
8. The Negotiations Process and Strikes
9. Dispute Resolution Procedures
10. Contract Terms and Employment Outcomes

7 Union Organizing and Bargaining Structures

UNION ORGANIZING

Chapters 7, 8, 9, and 10 examine the middle (functional) level of labor relations activity. The focus in this chapter is the processes that create, or organizes labor into, new unions and the bargaining structures that determine which employees are covered by a collective bargaining contract.

In some ways, the representation election is the most important step in collective bargaining: if unorganized workers vote not to be represented by a union, collective bargaining cannot proceed. In contrast, positive expression of worker interest in representation opens the way for subsequent bargaining.

Various factors in the external environment shape the power and preferences of the parties in the organizing process. The law, for example, plays a prominent role in union-organizing drives and representation elections. Environmental factors also exert an important influence on the determination of the formal bargaining structures a union and management will use in the bargaining process. Strike leverage and the economic environment, for example, are prominent not only because of their effects on organizing success but also because they shape the parties' preferences for particular bargaining structures.

Negotiations cannot take place until a bargaining representative has been duly certified as the exclusive representative of the employees. Normally, this requires that a union win a representation election (although an employer may voluntarily recognize a union if the union can demonstrate that it represents a majority of the employees involved).[1] The events and regulations that surround representation elections are described below.

The Organizing Process

The key steps in the organizing and representation election process are described in Box 7.1. Note that before the NLRB will schedule an election, at least 30 percent of the election unit must have signed an **authorization card** indicating they would like an election to be held. In actual practice, most unions will not request an election unless they have already signed up a significant majority of potential voters.

BOX 7.1

Steps in Organizing a Union and Holding a Representation Election

1. Interested employees seek out a union to learn their rights and gain help in organizing, or a union seeks out a group of employees in order to explain their rights to them and explore their interest in organizing.
2. The union builds support for organizing among the employees and solicits their signatures on authorization cards.
3. When sufficient cards are signed to indicate substantial employee support, the union asks for recognition as the bargaining agent for the employees. If at least 30 percent of the employees have signed cards, the union can petition for an NLRB certification election. If over 50 percent of the employees have signed cards, the union can ask the employer for recognition, or, if this is refused and serious unfair labor practices are committed by the employer, the union can ask the NLRB for certification. If the employer does not voluntarily recognize the union, either party can petition for an NLRB certification election to determine whether the union has majority support.
4. The NLRB investigates to determine whether an election should be held. The board considers whether it has jurisdiction, whether there is sufficient interest among the workers, and whether there is already a bargaining agent, and whether an election has been held in the past twelve months. Most important, the NLRB determines the appropriate bargaining unit.
5. If the NLRB finds that the conditions for an election have been met, it orders that one be held. Procedures of varying formality are used, depending on the level of disagreement between the parties. Expedited procedures can be used if the union has engaged in picketing to organize workers or to obtain union recognition from the employer.
6. Once an election date is set, campaigning on both sides intensifies. Restrictions apply to both union and management behavior during this period. This is because both sides need to maintain laboratory conditions; that is, an environment in which workers can make free, uncoerced choices.
7. Representatives of the NLRB conduct an election by secret ballot. The union, management, or the NLRB can challenge an individual's right to vote. For example, a claim might be made that an employee does not work within the designated bargaining unit or that he or she is a supervisor and thus is excluded from coverage. If there are more than two choices on the ballot and no option receives a majority vote, a runoff election will be held between the two choices that received the most votes.
8. If the union wins the election, then, after any objections or appeals, the NLRB certifies the union as the exclusive bargaining agent for the employees. The employer has the obligation to begin negotiating a first contract. If the employer wins the election, there can be no further election for twelve months.

Why Workers Might Want Union Representation

To understand how the organizing process works, it is useful to first ask why an individual might seek union representation. Evidence shows that for workers to express a preference for unionizing, they must (1) be deeply dissatisfied with their current job and employment conditions; (2) believe that unionization can be helpful in improving those job conditions; and (3) be willing to overcome the generally negative stereotype of unions in the U.S. population.

Workers might turn to unions because of their concerns with employment conditions or because they are unsatisfied with the process by which decisions are made at their workplace. Thus, workers might, for example, vote in favor of the union in the hope that subsequent contractual negotiations will improve wages. Or a worker might be angered by a recent managerial decision, such as a layoff or a disappointing **performance appraisal**. In these cases, the worker might turn to the union with the hope that the union will either improve future management decisions or, at a minimum, give employees a greater voice in future decision making.

The evidence Richard Freeman and Joel Rogers collected on why employees vote in favor of union representation is provided in Box 7.2. Their survey evidence shows that a very significant factor in employees' decision to unionize is their confidence and trust in management and employees' feelings about whether they are being treated fairly by management.

Union Campaign Practices

Unions commonly rely on organizers to rally employee support during election campaigns. These organizers often include paid full-time staff from existing unions who travel from campaign to campaign. The union also often enlists some of the work force to assist as organizers. Organizers and union supporters use a variety of mechanisms to promote a pro-union message. They often hold group meetings

BOX 7.2
Employee Motives for Voting to Unionize

Nonunion employees are more likely to say they would vote for a union when they also say that:

1. Relations between employees and management are bad.
2. They do not trust management.
3. They believe that management shows little concern for employees.
4. They dislike their job.
5. They are dissatisfied with their influence and with the workplace.
6. They believe management is unwilling to share power.

Source: Survey evidence reported in Richard B. Freeman and Joel Rogers, *What Do Workers Want?* (Ithaca, N.Y.: Cornell University Press, 1999).

after work hours in a local church or community meeting room. Union supporters who have the opportunity to move around the work site often spread the message during work hours.[2]

Management's Campaign Practices

Management is rarely a passive observer in the election process. Managers often try to design personnel and other corporate policies far in advance of any representation election to dissuade employees from favoring union representation. These tactics can be as important to the election outcome as the tactics management might use during an election campaign.

Common strategies managers use *before* the onset of organizing campaigns to reduce the incentive to unionize include most, if not all, of the following:

1. Wages and fringe benefits equal to or greater than those paid to comparable workers in the local labor market.
2. A high rate of investment per worker in such employee programs as training and career development.
3. Extensive efforts to stabilize employment and avoid layoffs as much as possible.
4. Advanced systems of communications and information sharing in the company.
5. Informal mechanisms for or encouragement of participation in decision making about the way work is to be performed.
6. Development of a psychological climate that fosters and rewards loyalty and commitment to the company.
7. Rational administration of wages and salaries, performance appraisal, and promotion systems that reward merit but also recognize seniority.
8. A nonunion grievance procedure (usually without binding arbitration).
9. Locating new production or service facilities in southern states or rural areas or areas that are only sparsely unionized.

Management does not always have the will or foresight to put all these policies in place, and election campaigns can arise even when some of them are in place. When managers face a representation election, they typically will attempt to convince employees to vote against union representation. They will call meetings with employees (these might be individual or group meetings) to make their case. Under the NLRA, management is allowed to hold these meetings on company time and in company facilities (the law allows captive-audience speeches up to twenty-four hours before the vote). During such a meeting, a management spokesperson (such as the company president) might remind the employees of the direct costs of union membership (dues) or the potential losses in income to employees during any strikes that ensue.

Under the NLRA, employers may not threaten to punish workers if they join or vote for a union. The NLRA also forbids employers from making promises to workers that might encourage them to reject the union. But an employer may make a prediction about the future if the prediction is based on fact. An employer may say that workers could be laid off if the union wins the election and successfully

negotiates for a 50-cent raise, provided the employer has the evidence that a 50-cent raise would lead to layoffs.

The NLRA gives the NLRB two ways to require an employer to recognize and bargain with a union if it finds that an employer has committed egregious violations of the labor law during a representation campaign. One option is to issue a direct order certifying the union as the bargaining agent and requiring the employer to bargain with it, and the other is to go directly to a federal court to obtain an injunction requiring the employer to stop its illegal actions and to bargain with the union. In recent years, the NLRB has made greater use of the court injunction option because it takes less time to implement. Box 7.3 describes a recent case where the Board acted directly by issuing a bargaining order.

The Election Unit

The **election unit** is the group of employees that the NLRB (or the appropriate state agency with jurisdiction over the employees involved) determines is covered under the appropriate statute and is eligible to vote in the representation election.

BOX 7.3
A Rare Case Where the NLRB Ordered Union Recognition

Although the NLRB rarely exercises its authority to order management to recognize a union, this does sometimes happen in the face of egregious employer violations of the nation's labor laws. A case occurred at a New York branch of Hogan Transports Company, which provides trucking services exclusively for the Save-A-Lot supermarket chain. The Teamsters union began attempting to unionize the employees in June 2013. The union alleged that the employer had committed several violations of fair labor practices after the petition for an election, including threats of job loss, coercive pay raises, and a biased termination.

The NLRB issued a bargaining order in this case by ruling that while the violations did not constitute "exceptional" or "outrageous" violations (two criteria that justify issuing a bargaining order), the employer's actions met the third criteria of significantly diminishing the chance that a fair election could take place. In the Hogan Transports case, supervisors held multiple captive-audience meetings at which they claimed to have received strong indications from their sole supplier, Save-A-Lot, that it might terminate its contract if the shop unionized. This claim was uncorroborated in the investigation. Also, Hogan Transports put a pay raise into effect when it learned of the union campaign, with no evidence that this would have happened if no election was to be held. Finally, a vocally pro-union employee was terminated under suspicious conditions.

Source: Hogan Transports, Inc., 363 NLRB No. 196 (May 19, 2016)

Two main decisions must be made to define the appropriate election unit. First, the range of employees to be included must be decided. This may involve choosing between a craft election unit structure (covering only workers in a single occupation), an industrial election unit structure (for example, all the blue-collar production and maintenance workers in a plant), or between employees at one plant or location and employees at multiple plants or job sites. Second, the issue of who functions as a supervisor or manager must be decided, because since the passage in 1947 of the Taft-Hartley amendments to the National Labor Relations Act, supervisors have been excluded from coverage of the act.

The Scope of the Unit–The NLRB's Criteria

Since the composition of the electorate can influence the outcome of the election, the scope of the election unit is often a hotly contested issue. The union typically will seek an election unit that maximizes its ability to win the election and the employer will seek a unit that minimizes the union's chances of winning. The NLRA states that the fundamental objective in choosing an election unit should be to ensure that employees have "the full freedom in exercising the rights guaranteed by this act."

The NLRB and the state and local boards normally consider the following general criteria in deciding on the appropriate election unit:

1. The community of interests among the employees
2. The potential effects of alternative units on stability in the labor-management relationship
3. The need to provide sufficient freedom of choice to professional and skilled employees
4. The history of bargaining or the employer's decision-making structure with similar units

This fourth criterion is useful in resolving disputes between the parties over whether certain employees should be excluded because they perform supervisory or managerial functions.

Whether craft workers are put into the same election unit as production workers in the same plant (or company) is a difficult part of the process of determining an election unit. Although Section 9(b)(2) of the Taft-Hartley Act was designed to limit the NLRB's ability to put craft workers into industrial election units, the board has consistently rejected petitions to exclude craft workers from the large industrial units. Indeed, the board has argued that the interdependence between craft workers and production workers warrants a single comprehensive unit.

The NLRB has been somewhat more willing to grant professional employees a separate bargaining unit. Section 9(b) of Taft-Hartley prohibits the NLRB from including professional employees in a bargaining unit with nonprofessional employees unless the professionals decide by a majority vote to be included in a larger, more comprehensive unit.

Union Organizing Success Rates

In 2015, labor unions won 69.5 percent (1,128 out of 1,628) of the representation elections conducted.[3] This figure declined steadily from the 1960s to the mid-1990s but has risen steadily since then. However, the number of workers organized through the election process continues to be very small relative to the size of the nonunion labor force. In any given year since at least the 1990s, unions have organized less new members than the number of new entrants to the labor force. In 2015, unions organized some 61,650 workers through NLRB elections, down slightly from 64,000 in the previous year. In 2015, unions won 73 percent of elections held for units of less than 50 employees, compared to a win rate of 61 percent for units with 50–99 employees and 58 percent in units with 100–499 employees.[4] In large multi-establishment companies, unions have had trouble even securing enough signed authorization cards to certify to the NLRB that an election should be held.[5] These data make it clear that unions are not going to reverse their long-term decline by using the established procedures of the NLRA unless they make efforts to substantially increase the number of organizing drives they conduct.

Union involvement in representation elections and win rates in those elections vary somewhat by union. The Teamsters are the most active union in representation elections. They participated in 384 representation elections in 2015, accounting for approximately 20 percent of all NLRB representation elections. The union involved in the second highest number of representation elections was the SEIU, with 152 elections in 2015. SEIU, the Laborers International Union of North America and the International Association of Machinists and Aerospace Workers were the most successful unions in representation elections; each won about three-fourths of NLRB elections in which they participated.

At the same time, the low level of recent union organizing success and the fact that only 11 percent of the work force is now unionized should not be taken to mean that only a small fraction of the American work force desires union representation.[6] The most complete survey of how workers would respond to union organizing efforts on their jobs and how they would expect their employer to respond was carried out in the mid-1990s by Professors Richard Freeman and Joel Rogers. The results showed that a sizable number of nonunion employees desire union representation. Just under one-third of nonunion private sector employees indicated that they would vote for union representation if given the chance to do so. That was essentially the same percentage who gave this response in the first national survey of this kind in 1976.

More recent polls (the most recent was in 2004) indicate interest in union representation has increased to just under 50 percent of the nonunion workers who participated in nationally representative surveys. Thus, the interest of nonunion workers in joining a union has increased substantially over the past several decades even as union membership has decreased, leading Freeman and Rogers and others to conclude that there is a large **representation gap** in the United States.

In response to declining unionization, American unions have adopted new organizing strategies (described later in this chapter). One aspect of the new

organizing approaches of American unions is intensified efforts to organize professional employees. As Box 7.4 describes, this includes organizing campaigns among university professors and graduate assistants.

Even if a union wins a majority vote in a representation election, this does not ensure that a first contract will be negotiated. The NLRA requires that employers (and the union) bargain in good faith, but the law does not require that the parties reach agreement. In fact, first contracts are won in only about two-thirds of newly designated units.

Does the Election Campaign Influence How Workers Vote?

Research has shown that workers tend to become less inclined to vote for union representation when an election is delayed.[7] Studies also show that illegal employer behavior during the election campaign (a signal of aggressive employer opposition to bargaining) further reduces the probability that a first contract will be settled.[8] The effects of employer resistance is quite substantial; as we noted in Chapter 6, the most comprehensive study of this issue found that only about 10 percent of bargaining units where a majority of workers sign authorization cards are successful in achieving a first contract if the employer resists to the point that an unfair labor practice charge is filed.[9] Evidence also shows that firms with previously poor worker-supervisor relations and low wages are more likely to commit violations of fair labor practices during election campaigns.[10]

The results of these studies further reinforce a conclusion most unions have come to: investments in organizing through the procedures the NLRA has established have to be made very carefully, given the low probability of success and the high costs involved. Most union leaders today look for other ways to gain **neutrality** from employers in organizing or find ways to attract members without having to use these processes. The evidence also indicates why most labor law and policy experts recognize that this feature of labor law is in need of fundamental reform. We will discuss options for reform in Chapter 16.

In 2015, the NLRB announced some changes in how it would administer representation election processes and adjudicate claims that an employer or union was violating the rules governing these processes. Specifically, it indicated that it would speed up the process by no longer hearing evidence on unfair labor practice charges until after the election, by requiring employers to provide unions with the e-mail addresses of those eligible to vote (in the past, only mailing addresses were required), and requiring employers to post notices of the right of workers to form a union. These new administrative processes have been in effect only a short time and it is too early to tell whether they will make any difference in the outcomes of elections.

Union Decertification

Unions lose members through **decertification elections**. The 1947 Taft-Hartley amendments to the NLRA prescribed the election procedures for decertifying a union.

BOX 7.4

The Unionization of University Professors and Graduate Students

Working in higher education has become increasingly precarious as universities have shifted from staffing full-time, tenure-track professors to relying significantly more on part-time adjunct professors and graduate assistants. Though these changes have made unionization necessary by lowering the standards of working conditions, they have also created greater opportunity for successful unionization efforts.

This apparent paradox can be resolved by looking at one of the major historic roadblocks to university unionization. In 1980, a conservative Supreme Court ruled in *NLRB v. Yeshiva University* that tenure-track professors in private universities were ineligible for unionization because they had significant managerial authority in the university. However, the growth of the administrative bureaucracy that enabled the transition to a contingent work force led the NLRB to decide in 2014 that "colleges and universities are increasingly run by administrators" and that therefore professors are for the most part nonsupervisory employees.

While the NLRB has recently begun to open the door for unionization for private institutions, professors in public universities not covered by the board's jurisdiction have, as with other industries, unionized at a far more rapid pace than their counterparts in private universities. Of the estimated 386,000 unionized university faculty in the United States, 344,762 work in public universities.

Those who have been most affected by the changes in academia are the ones who have fought the hardest for unionization. Graduate, teaching, and research assistants have borne an increased workload as universities staff less full-time professors. These educators also face bleaker job prospects after earning their degree. Their efforts were stunted in 2004, when the NLRB ruled in a case concerning Brown University students that because graduate students were "primarily students," they were ineligible for unionization. However, an NLRB ruling in August 2016 in favor of Columbia University students has practically overturned the 2004 ruling by stating that despite their broader relationship with the university, graduate students are still protected under the NLRA and can form a union based on the work they perform under the direction of the school. This may prove to be a watershed event in the struggle for university student unions.

Source: Noam Scheiber, "Grad Students Win Right to Unionize in an Ivy League Case," *New York Times*, August 23, 2016; and David Ludwig, "Why Graduate Students of America Are Uniting," *The Atlantic*, April 15, 2015.

The decertification elections held since Taft-Hartley have been far fewer than the representation elections, but in recent years their number has been increasing and unions have been losing an increasing percentage of these contests. The first year after Taft-Hartley passed, for example, 97 decertification elections were held, or only 3 percent of the 3,822 representation elections held that year. That ratio held steady throughout the 1950s and 1960s but began creeping upward in the 1970s. In 2015, 185 decertification elections were held and unions retained representation rights in 72 (or 39 percent) of them.[11]

Most union members appear to be satisfied with their unions and union leaders. A recent survey finds that union members are generally very satisfied with their personal experiences with the unions at their workplaces. Survey data shows that 90 percent of union members would vote to keep their union if given the chance to directly vote on the issue.

THE DEBATE OVER LABOR LAW REFORM

The difficulties workers and unions have experienced in navigating through the representation process in the face of employer resistance has led to much debate over whether the endorsement of collective bargaining that the NLRA provided is being fulfilled. Remember that the original objective of the law was to ensure that employees would be able to exercise free choice regarding union representation, untrammeled by an employer's (or a union's) false promises or false information, threats of reprisals or promises of benefits, or misuse of economic power. To reach this objective, the NLRB (and most state labor boards) attempted to establish **laboratory conditions** for the election process. The notion was that workers should be free to judge whether they wanted union representation in an environment free of coercion and misinformation.

Advocates of **labor law reform** often argue that the penalties imposed on employers who commit unlawful acts during an election campaign are too weak. They also claim that the procedures for remedying unfair labor practices and or holding representation elections are too protracted and that too often employers merely move or close operations as part of union avoidance strategies. As we will discuss in more detail in Chapter 16, a major congressional debate over labor law reform occurred in 1977 and 1978. The labor law reform bills introduced then would have imposed harsher penalties on labor law violators, required stricter time limits on the election process, and provided stronger remedies for victims of unfair labor practices. The bills were not passed (one bill passed the House of Representatives but died in a filibuster in the Senate in 1978). In 1991, Congress debated labor law amendments that would limit the ability of employers to hire permanent replacements during a strike. In 1994, a presidential commission, the so-called **Dunlop Commission,** recommended several changes in labor laws and the application of laws to overcome delays and other tactics employers have been using to oppose union organizing. However, in the end, the Dunlop Commission's recommendations were ignored. In 2009, after the election of Barack Obama, the labor movement mounted another effort to reform labor law with

the Employee Free Choice bill. That bill stated that a union could be certified if it could demonstrate that a majority of eligible workers had signed cards authorizing the union to represent them (instead of requiring an election), strengthened the penalties for violating the law, and provided for arbitration of the first contract if the parties were not successful in negotiating an agreement. This bill passed in the House of Representatives but again could not overcome a filibuster in the Senate. These efforts and what they imply for the future of labor law reform will be discussed again in Chapter 16. For now, it is sufficient to note that the debate continues over the performance of the nation's labor policies.

Box 7.5 summarizes some the recommendations advocates of labor law reform have made with little success. In the absence of legal reforms, many unionists and analysts suggest that aggressive employer union avoidance has become more common in recent years. This has led union activists to increase union organizing efforts and to turn to nontraditional union organizing tactics.

BOX 7.5
Selected Proposals for Reforming Representation Processes

1. Require employers to recognize a union when a majority of workers have signed cards authorizing the union to serve as their bargaining representative.
2. Give unions the right of access to employees for campaign purposes equal to the access employers have.
3. Stop attempting to regulate statements employers or unions make as part of election campaigns.
4. Speed up the enforcement of current rules governing elections and strengthen the penalties imposed on violators of the law by
   a. making it easier to obtain or requiring court injunctions to stop and/or remedy serious violations of the law, such as discriminatory discharges during campaigns;
   b. deferring hearings and decisions on unfair labor practice claims until after an election is held;*
   c. reinstating employees quickly, in time to allow union supporters to return to employment *before* the campaign is over and the vote is held;
   d. allowing employees or the union to sue for civil damages in cases where an employer willfully violates of an employee's rights; and
   e. lifting the constraint on the amount of the settlement an employee can receive in cases where employer conduct exhibits a consistent pattern of illegal behavior.**
5. Conduct speedy elections, with a very short time allowed for campaigning.*

6. Strengthen the ability of a union to strike to achieve a first contract by eliminating the ability of an employer to permanently replace strikers and by allowing other workers to boycott the goods of an employer involved in a strike.
7. Require arbitration of first contracts if an impasse occurs.

*The NRLB took steps in this direction in 2015 with administrative rule changes.
**Under current law, a court can only award a settlement equal to the wages lost by an employee since the time of discharge.
Sources: Paul C. Weiler, "Milestone or Millstone: The Wagner Act at Fifty," in *Arbitration 1985: Law and Practice*, ed. Walter J. Gershenfeld (Washington, D.C.: Bureau of National Affairs, 1986), 37–67; and Charles J. Morris, *American Labor Policy: A Critical Appraisal of the National Labor Relations Act* (Washington, D.C.: Bureau of National Affairs, 1987).

Nontraditional Union Organizing Tactics Such as Corporate Campaigns

Given the great difficulties they have faced using traditional election campaign tactics, several unions have adopted more aggressive **corporate campaigns** and other tactics designed to increase the chances of organizing new workers. Corporate campaigns involve a variety of efforts to bring public, financial, or political pressures to bear on top management.

The first large-scale corporate campaign was carried out against the J. P. Stevens Company in the late 1970s. The Amalgamated Clothing and Textile Workers Union (ACTWU) waged a successful national boycott of Stevens products, threatened to withdraw the union pension funds from banks that had officers on Stevens's board, and, eventually, after almost a decade of effort, negotiated its first contract with the company. Since then, similar efforts have been mounted in attempts to organize the operations of nursing homes, hospitals, and a variety of other private sector firms.[12]

Most of the union corporate campaigns have been accompanied by strategies designed to influence the employer involved in the election indirectly by putting pressure on individuals or other firms that do business with or have interlocking directorates with it. These efforts attest to the unfairness labor leaders perceive and the frustrations they have experienced with the election process as it has been administered by the NLRB.

Since the late 1980s, the SEIU has led a campaign to organize janitors in several regions of the country using nontraditional tactics that in some cases seek to go outside the NLRA and NLRB procedures to gain union representation. Its Justice for Janitors campaign tries to organize on a multiemployer (regional) basis and often avoids normal NLRB-style representation elections by inducing employers to voluntarily recognize the union. The janitors' campaign often puts pressure on the primary employers that typically rely on subcontractors to provide janitorial services in their buildings, such as Apple (see Box 7.6). The Justice for Janitors

BOX 7.6

The Justice for Janitors Campaign

In 1985, the Service Employee International Union (SEIU) launched its Justice for Janitors campaign in response to a strike by cleaning workers at Mellon Bank in Pittsburgh. The nationwide campaign to organize cleaning service workers targeted high-profile companies that contract out their cleaning services to nonunion cleaning companies. The SEIU targeted the large firms that use these nonunion cleaning companies rather than targeting the nonunion employers directly because it claims that the large firms set the standard for wages in the industry by determining the amount of money paid to the contractors. The union claimed that the nonunion cleaning companies committed frequent wage and hour violations and gave poor wages and benefits (an estimated $12,000 a year with no health care benefits). The same type of campaign that began in Pittsburgh has now been used in other cities.

In its Justice for Janitors campaigns the SEIU has used tactics such as picketing, demonstrations, coalitions with commercial groups, and negative publicity about the corporations that exploit cleaning workers to put pressure on both the large firms and the nonunion cleaning companies. The campaign targeted large companies such as Apple, Hewlett-Packard, and Toyota.

However, in the spring of 1997, SEIU president Andrew Stern publicly acknowledged that the noisy demonstrations, traffic tie-ups, and civil disobedience against Washington, D.C., employers had produced too much antagonism. He pledged to end the strikes and pickets and the involvement of third parties in the dispute. Stern also emphasized that while it was necessary to change tactics, the union's goal continued to be the achievement of decent working conditions for janitors.

In the 1990s and 2000s, SEIU successfully organized the cleaning industries in many major cities, using less dramatic tactics. Then, beginning in 2014, possibly spurred by the Occupy Wall Street movement, the SEIU funded major walkouts in the fast-food industries of several large cities, beginning with Fast Food Forward in New York. These movements coalesced under the banner of the motto Fight for $15 and used many of the strategies that Justice for Janitors had proved to be viable.

The SEIU received some criticism from members who felt that it was using valuable resources to help a nonunionized work force, but the rapid success of the movement eventually led to widespread praise. Many states and major cities responded to the civil disobedience and lobbying by passing new minimum wage increases. This nationwide success may be somewhat attributable to the attention given to the movement by two major Democratic candidates for the presidency in the 2016 election.

The movement has also given back, in a way, to its roots. In June 2016, janitors in Denver successfully negotiated for a wage increase to $15 an hour. This is at least in part a result of the fact that the Fight for $15 campaign has normalized this previously unattainable figure. With these campaigns, the SEIU has proven that a broad-based approach can be effective in changing industry practices and that despite the waning influence of unions, they need not tread lightly to be successful.

Sources: "100,000 Janitors Covered in the SEIU Pacts Bargained During 2000 in Two Dozen Cities," *Daily Labor Report*, November 28, 2000, C-1.; Kelsey Ray, "Denver Janitors Sign 'Historic' $15 Minimum Wage Agreement," *Colorado Independent,* June 30, 2016; Josh Eidelson, "The Lessons Unions Learned from the 'Justice for Janitors' Protests," *Bloomberg Politics*, June 16, 2015.; Steven Greenhouse, "Fast-Food Workers Seeking $15 Wage Are Planning Civil Disobedience," *New York Times,* September 1, 2014.

campaign also tries to make alliances with community groups such as churches to gain public support for union-organizing efforts.

The AFL-CIO Organizing Institute and the AFL-CIO Organizing Department

The AFL-CIO has long admitted that unions have difficulty organizing workers. In response, it created the **AFL-CIO Organizing Institute**. The Organizing Institute focuses exclusively on organizing and providing programs that train new organizers. The AFL-CIO gave its Organizing Department a sizable budget and the task of extending the types of activities that the Organizing Institute begins. In addition to recruiting and training new organizers, the Organizing Department provides affiliated unions with strategic planning and analysis for organizing campaigns. The AFL-CIO's Union Summer program funds college interns engaged in summer union-organizing projects.

The Rank-and-File Organizing Approach

In recent years, unions have focused on reaching workers by employing young, well-educated organizers and reaching out to engage the support of community groups such as churches, immigrant groups, and other social activist organizations. This approach to organizing is called the rank-and-file style and contrasts with the top-down, traditional organizing style that relied on appointed organizers and formal communication strategies. Rank-and-file organizing also tries to modernize and broaden the issues that attract employees to unions by addressing child care, equal pay, and other issues that are of concern to the current work force. Research conducted by Kate Bronfenbrenner suggests that this rank-and-file method of union organizing has been more successful than traditional methods in the private sector.[13]

Employer Neutrality during Representation Elections

In recent years, some unions have negotiated rules governing the organizing of new bargaining units with an employer.[14] Often included in such language is the employer's agreement to remain neutral during the organizing process. In the agreements of the Communications Workers of America (CWA), the United Auto Workers (UAW), and the United Steelworkers (USW), for example, neutrality is defined as "neither helping nor hindering" the union's organizing effort, but the contracts allow managers to communicate "facts" to workers, in some cases only in response to inquiries. A different approach is language that makes clear that the employer will not communicate opposition to union representation.[15] In a few cases, employers have gone so far as to agree to inform employees that management welcomes union representation.

Union leaders argue that management should give unions the opportunity to represent employees in new establishments of the company they work for. In some cases, management has agreed and has accepted unions in new establishments if the union demonstrates flexibility and a commitment to **labor-management cooperation**.

One of the key strategic choices management faces is whether to contest unionism during a representation election or to voluntarily recognize the union in return for a more cooperative union-management relationship. Recent experience suggests that the parties can create a more positive working relationship by avoiding hostility during a campaign election and thus start the union-management relationship off on a good footing. Unions have pushed management in recent years to use card check recognition, discussed more fully below, which goes even further than neutrality in assisting union organizing.

Voluntary Recognition

The NLRA allows employers to voluntarily recognize a union. The law, of course, also allows employers to remain neutral during a representation election campaign. In the 1940s and 1950s, it was not uncommon for employers to either adopt **voluntary recognition** or maintain **employer neutrality** during election campaigns. Employers' voluntary recognition of a union and employer neutrality in representation elections have declined since the 1940s and 1950s. Nonetheless, there are some important exceptions to this trend.

The Southwest Airlines Case

Southwest Airlines was first formed as a regional carrier in Texas. Its founder and CEO until his retirement in 2002, Herb Kelleher, viewed cooperative and flexible relations with the work force as a key competitive advantage for a service-oriented business. He did not oppose unionization at Southwest, and today it is one of the most highly unionized airlines in the country. The strategy has paid off well for Southwest over the years. It has grown to become the fourth largest carrier in terms of numbers of employees, it has been the most consistently profitable airline in the industry, and it has consistently ranked at or near the top

of the industry in customer satisfaction. Part of Southwest's success has been attributed to flexible labor contracts, cooperative relationships, and the high levels of coordination achieved among workers doing different jobs.[16] Yet in recent years relations between Southwest and its unions have become more strained as its labor costs have risen to among the highest in the airline industry.

Another interesting case involving employer neutrality is the UAW's experience in attempting to organize Volkswagen's assembly plant in Tennessee. First it attempted to get the German company to be neutral in the organizing effort. To do so, the UAW enlisted the support of IG Metall, the union that represents workers at the parent company in Germany. While the UAW got a formal commitment from Volkswagen that it would be neutral as part of an agreement to set up a German-style **works council** if the union won the election in the Tennessee plant, organizers experienced strong opposition from elected officials in Tennessee and lost the representation election in a close vote. Subsequently, the UAW has organized a unit of skilled trades workers in the plant (see chapter 8 for further discussion of this case).

In recent years, facing increased employer hostility in representation elections and declining rates of success in those elections, unions have increasingly turned to card check recognition procedures to gain recognition. Often an employer's pledge to remain neutral during any organizing drive is included with card check recognition. Unions have had mixed success with those procedures.

A few of the large telecommunication firms that used to be a part of the Bell System have accepted voluntary card check recognition procedures in recent years. What makes these cases so interesting is the fact that the employers were willing to agree to these policies regarding organizing because the unions that represent telecommunications employees, the CWA and the International Brotherhood of Electrical Workers (IBEW), agreed in exchange to support mergers or regulatory policies that management favored.[17]

One place where card check recognition led to significant organizing was at SBC Telecommunications. (Since the merger of SBC and AT&T, the relevant operations are now part of the new AT&T.) In August 2005, the CWA obtained a national card check and neutrality agreement from Cingular Wireless. Cingular agreed to recognize the union if more than 50 percent of the bargaining unit signed authorization cards. As a result, the CWA organized nearly all of AT&T's customer service representatives and technicians.

However, not all neutrality and card check agreements lead to successful union organizing. For example, in August 2000, Verizon Communications signed a four-year contract with the IBEW and the CWA in which it agreed to card check recognition so long as 55 percent of the bargaining unit supported union representation. Four years after the agreement was signed, the contract expired with no more workers represented than when it began.[18] According to the CWA, although Verizon agreed to be neutral during organization drives, the company went to great lengths to keep workers from being organized. The CWA claimed that during the same year Verizon signed the contract, it prevented unions from distributing cards in a timely fashion by taking much longer to classify precise

bargaining units than was necessary. The union also argued that the company rejected the union's presentation of the correct number of authorization cards and filed a lawsuit in an attempt to prevent the union from being recognized. In Chapter 8, we discuss in more detail how the CWA finally won a first contract that covered customer service workers in a handful of Verizon stores in New York City as an outgrowth of a strike in 2016.

OPTIONS FOR UNION RENEWAL

The limited success unions have achieved in reversing membership declines through conventional organizing strategies has led some both inside and outside the labor movement to urge unions to experiment with alternative approaches to recruiting, organizing, and retaining workers. Some of the alternative renewal strategies various unions are using include:

- Organizing without relying on NLRB election procedures. Some unions have used their leverage in collective bargaining to gain neutrality and card check recognition agreements for new groups of employees, as discussed above and in Box 7.7.
- Using corporate campaigns and political influence with government regulatory bodies to neutralize employer opposition in organizing campaigns. The United Steelworkers and the CWA have used this approach with particular effectiveness.[19] The SEIU successfully used innovative grassroots organizing and political lobbying in the process of organizing 75,000 home health care workers in California.
- Creating coalitions with community groups to build support for organizing efforts. The best-known and most successful example of this is the SEIU's Justice for Janitors campaign (described above and in Box 7.8), which gained bargaining recognition for office building owners and cleaning contractors in a number of cities.
- Recruiting individuals as "associate members" even if it is not possible to obtain exclusive representation status or a collective bargaining agreement. Teachers' unions have used this approach for many years, and more recently unions such as the CWA have used it to establish and support temporary workers at Microsoft and employees at IBM.

Other ideas being debated in the labor movement include finding ways to do more to retain members once they are organized, even when they move across jobs. This would require unions to provide a range of labor market, continuous education, and training services to workers to support their movement from one job to another. Another idea is organizing and providing services to members via the Internet. A third idea is to target young people as potential members by providing career counseling and job-finding services and access to portable fringe benefits. All these efforts are a response to data that shows that many workers move in and out of union status over the course of their careers. If workers could be recruited into unions at the start of their careers and given reasons to retain

BOX 7.7
Are Neutrality Agreements Legal?

One might not expect that a neutrality agreement would be a controversial issue. On the face of it, the employer is simply agreeing to remain neutral while employees decide for themselves whether they wish to form a union. However, these agreements have received scrutiny when they include certain provisions that might resemble a collective bargaining agreement prior to union certification.

A recent case that demonstrated this controversy is the NLRB's Dana Corporation decision. The UAW and the Dana Corporation, an automobile parts manufacturer, reached a neutrality agreement that consisted of principles that both parties agreed to adhere to if the union was certified and negotiations began. Unions and employers who support these types of neutrality agreements claim that they foster a positive relationship from the start of negotiations.

Opponents, including right-to-work politicians and activists, claim that such deals are a violation of section 302 of the Taft-Hartley Act, which makes it a crime for an employer "to pay, lend, or deliver, or agree to pay, lend, or deliver, any money or other thing of value" to a union seeking to represent its employees. The intent of this provision is to prevent unions from extorting employers and employers from bribing union officials.

The NLRB decided in 2010 that the agreement did not constitute extortion or bribery and therefore did not violate the Taft-Hartley Act. The Board did not dictate any specific test, but explained in its reasoning that a final collective bargaining agreement would still require "substantial" negotiation, and that the agreement represented simply a framework for bargaining. The Court acknowledged the benefits of such a framework, and recognized the employer's right to "engage in at least some preliminary substantive decisions with a union." However, there remains some disagreement on this issue between different Circuit Courts, meaning that perhaps a Supreme Court decision will ultimately be necessary to resolve the issue.

Source: "Parties Weigh in on NLRB Case Involving Neutrality Agreement between Dana, UAW," *Daily Labor Report*, June 21, 2006, C-1; 356 NLRB No. 49, Dana Corporation and International Union, United Automobile, Aerospace, and Agricultural–CIO and Gary L. Smeltzer Jr. and Joseph Montague and Kenneth A. Gray.

their membership as they move through their working years, both the recruitment and turnover problems could be addressed at the same time. There is likely to be considerable experimentation with these alternative strategies in the years ahead.

Expanding the Definition of Unions

Some nonunion organizations provide some (but not all) of the functions of traditional unions. This too is an area of considerable experimentation. The largest

BOX 7.8
The Coalition of Immokalee Workers

The Coalition of Immokalee Workers (CIW) is a community-based labor organization that represents low-wage immigrant farmworkers on tomato farms in Florida. As unions do, the organization strives to protect its members' well-being and increase their wages. However, how it does this is quite different from the traditional union approach. The most important aspect of the organization's approach is that the way it incorporates appeals to the social responsibility principles of highly visible food retailers in order to pressure these companies to agree to better wages and working conditions. The CIW began this endeavor with its Campaign for Fair Food in 2001. The campaign reached out to many different religious groups and to students and young people, both locally and nationally, to educate them about the ongoing exploitation of farm workers. The main goal of this effort was to motivate consumers to bring pressure on large corporations to take measures that would put an end to such exploitation instead of merely using the labor power of the workers they employed. These efforts resulted in agreements with major companies such as Walmart, McDonalds, Whole Foods, Burger King, Trader Joe's, and Chipotle.

Building on these successes, the CIW launched the Fair Food Program (FFP) in 2011. It was based on the partnership that had been established between farm workers, farm owners, and corporations. The agreements among participants in this program state that buyers will buy Florida tomatoes only from farmers who have complied with the standards of the FFP. In addition, the buyers pay a Fair Food Program premium that is passed on to the workers as a bonus. The CIW holds education sessions at which workers teach other workers the new labor standards mandated by the Fair Food Code of Conduct. These standards are enforced by a third party, the Fair Food Standards Council, which regularly audits farms and continuously investigates complaints to find solutions, much the way unions have third-party arbitrators.

This approach to labor organizing has been lauded as the way forward for labor organizations and is credited with partially reviving the labor movement. The Coalition of Immokalee Workers has received national and international recognition, winning awards such as the 2015 Presidential Medal for Extraordinary Efforts to Combat Human Trafficking and the 2012 Natural Resources Defense Council's Food Justice Award. The Washington Post hailed its model of organizing as "one of the great human rights success stories of our time."

Sources: Coalition of Immokalee Workers website, http://www.ciw-online.org; and Michael Husebo, "Labor Agency Beyond the Union: The Coalition of Immokalee Workers and Faith-Based Community," MS thesis, Georgia State University, http://scholarworks.gsu.edu/cgi/viewcontent.cgi?article=1033&context=geosciences_theses.

such organization, the Freelancers Union, began recruiting independent contract professionals in the media and graphic arts industries in New York City in 1995.[20] It provides health benefits, networking opportunities, and related services to 250,000 media workers and focuses on the needs of these highly mobile professionals who are not covered under the National Labor Relations Act because they are independent contractors and not employees.

The Restaurant Opportunities Centers (ROC) takes another approach.[21] It seeks to organize employees of restaurants by asking customers to inquire about the working conditions of the employees who serve them and about the restaurant's sustainability practices in an attempt to connect employee issues with environmental concerns. In this way, the ROC seeks to build a coalition between customers and employees by using methods similar those used by various services such as Zagats to rate the quality of restaurants. It is interesting to note that the ROC does not want to be considered a union since it does not want to be constrained by the organizing and bargaining rules and limits the NLRA mandates. Ironically, it is the restaurant industry association that is trying to convince the NLRB and the courts to define the ROC as a union so it can limit its tactics. It particularly wants to disallow use of consumer boycotts.

Another organization that builds coalitions with food advocacy groups is the Coalition of Immokalee Workers. They also have negotiated with the food retailers that buy the products they harvest for the farmers that employ them and in doing so have been able to upgrade their wages and working conditions (see Box 7.8).

The largest new form of union membership is provided by Working America, an arm of the AFL-CIO that recruits individuals in local communities to join it to share political information and to mobilize support for worker-friendly candidates local and national elections. Working America was created under the leadership of Karen Nussbaum, the former president of 9 to 5, an organization of working women. It now has grown to a membership of over 3 million.[22] As is the case with the members of the ROC and the Freelancers Union, Working America members are not counted in the official statistics of union membership because they do not negotiate collective bargaining agreements. These groups may, however, signal new forms of union-supported or quasi-union advocacy networks.

The number of such advocacy networks appears to be increasing across the country. Some of them are using social media and related information technologies to recruit, share information with, and build networks among professionals and independent contractors. One such organization is SherpaShare, a third-party provider of information for Uber, Lyft, and their drivers.[23] Since Uber and Lyft insist that their drivers are independent contractors and not employees, the drivers are not covered under the NLRA. However, this is a contested issue that has been the subject of class actions, at least one community-level ordinance (in Seattle) that states that these drivers are employees and are eligible for union representation, and another voluntary agreement that allows Uber drivers in New York City to be represented by the International Association of Machinists and Aerospace Workers as a drivers' guild (see Box 7.9).

BOX 7.9

Uber Drivers' Organizing Efforts

When several dozen workers in Tampa, Florida, logged off an app for an hour every week in January 2016, it may not have looked much like a traditional strike, but they were arguably at the forefront of labor's next frontier. The workers were drivers for Uber, an app-based driving service, and they were protesting the company's recent fare cut in Tampa. People working through Uber and other companies like it have increasingly been looking to collective action as a means of protecting their interests in the "gig economy."

The "gig economy" is the term used for the evolving sector of jobs wherein non-employee workers freelance their labor through large app-based companies. Controversies have arisen as these companies have gained more market power and have begun to impose restrictions on workers that lead to circumstances more closely resembling an employment relationship. For instance, Uber drivers cannot set their own fares, they must conform to standards the company sets, and Uber uses user ratings as a justification for terminating them.

The logouts in Tampa occurred only a month after a unanimous vote by the Seattle City Council to allow Uber drivers and drivers in other app-based taxi services to form unions. The campaign to pass this ordinance was supported by the App-Based Drivers Association, an affiliate of the Teamsters Union. Uber has faced legal challenges elsewhere, including in California, where the California Labor Commission ruled that such drivers ought to be classified as employees and that as such, each California Uber driver was owed over $4,000 in missing wages. The drivers followed up with a class action suit against Uber, which remains unresolved. Similar legal challenges have been raised across the country, though none have been as successful yet.

Following the success of recent lawsuits and organizing drives, Uber responded to driver unrest in the important hub of New York City by coordinating with the International Association of Machinists and Aerospace Workers to create the Independent Drivers Guild. While this guild is not quite a union with inherent bargaining rights, it will function as a forum where drivers can voice concerns, receive discounted benefits, and coordinate appeals in cases of dismissal. The guild follows the model of Sara Horowitz's Freelancers Union, which has expressed its support for the drivers. This move by Uber illustrates the success of both unions and independent organizations that have pressured the company to respect the rights of its drivers.

Source: Nick Wingfield and Mike Isaac, "Seattle Will Allow Uber and Lyft Drivers to Form Unions," *New York Times*, December 14, 2015; and Paul Martyn, "Contingent Labor: Getting the Gig Economy Right," *Forbes*, February 2, 2016.

Other groups are providing information and services to unorganized groups that are similar to the services unions provide. One organization, Co-workers.org, helps workers organize surveys and petitions to employers to address specific workplace grievances.[24] Another group, The Workers' Lab, serves as a start-up incubator for entrepreneurs seeking to develop new models of representation for unorganized workers and contractors.[25] As David Rolf, president of the SEIU Local 775 in Seattle and one of the originators of the Workers' Lab states, the challenge for these new efforts is threefold: (1) to demonstrate that they can provide workers with bargaining power; (2) to grow to a scale large enough to have a significant impact; and (3) to devise a business model that will make them sustainable without outside funding from foundations or other subsidies.

Another form of representation is found in the various caucus or network groups that have been established in many companies to support African American, women's, gay-lesbian, and other identity groups. Many professional associations also represent their members through lobbying efforts and sometimes in more informal interactions with employers. Prime examples are the bar associations that lawyers join and branches of the American Medical Association and the more specialized doctor's groups that are springing up around the country to represent medical residents seeking to reduce their hours of work (see Box 6.1).

Very few of these groups have formal collective bargaining rights as defined and protected under the National Labor Relations Act, but they do offer their members services and in some cases a form of voice at their workplaces. Whether these new types of groups and organizations will change conceptions of what a union is or whether their members should be counted as union members are open questions.

BARGAINING STRUCTURE

Once unionization occurs, whether through an election or some other procedure, bargaining over a contract begins. Bargaining structure refers to the scope of the employees and employers who are covered or affected by the bargaining agreement.

Labor and management do not necessarily bargain contracts that cover only election units. For example, the employees in the various work sites of one employer represented by a union may wish to join together to negotiate a common contract that covers the whole company. In the auto, rubber, and other industries where industrial unions exist, there are companywide collective bargaining agreements. In addition, employees represented by the same union in multiple companies may prefer to band together and try to negotiate a common contract covering all the companies. This occurs in the coal, construction, and trucking industries. Such company or industrywide bargaining may not develop if the employees (or unions) prefer to bargain in a more decentralized manner and maintain plant-level or company-level bargaining.

Employee and union preferences are not the only determinants of the bargaining structure, however. Before we trace some of the determinants of bargaining structure, we need some definitions.

Definitions of Bargaining Structure

A **formal bargaining structure** is defined as the bargaining unit or the negotiation unit—that is, the employees and employers who are legally bound by the terms of an agreement. The **informal bargaining structure** is defined as the employees or employers who are affected by the results of a negotiated settlement, through pattern bargaining or some other nonbinding process.

There is no exact estimate of the number of bargaining units in the United States. Each year, however, the Federal Mediation and Conciliation Service gets approximately 20,000 notices that a bargaining unit will be negotiating a new agreement. (These notifications are required for a union to engage in a lawful strike, so nearly all unions covered under the National Labor Relations Act file them). FMCS data from 2012 to 2015 suggests that approximately 60,000 bargaining units are covered under the NLRA at any given time. Another estimated several hundred are covered under the Railway Labor Act that governs bargaining in the railroad and airline industry. There are no reliable estimates of the number of public sector contracts, but given the decentralized nature of bargaining in local governments, the number is likely at least equal to or more than the number in the private sector.

The Predominance of Decentralized Bargaining Structures in the United States

Compared to the bargaining structures in other countries, the United States has a highly **decentralized bargaining structure.** In many European countries, such as Germany and Sweden, many labor contracts cover entire industries or broad regions (see Chapter 15). In recent years, however, many European employers have been arguing for greater decentralization of bargaining to allow individual firms the latitude to adjust to their particular economic circumstances. Many U.S. employers are pressing for even further decentralization of the formal and informal structures of bargaining in this country.

Types of Bargaining Units

Bargaining structures have two primary characteristics. The first is the scope of employee or union interests a unit represents. There are three types: narrow craft, broad industrial, and multi-skill. The second primary characteristic is the scope of employer interests represented in the unit. These can be multiemployer (centralized), single-employer—multi-plant, or single-employer—single plant (decentralized).

Table 7.1 illustrates this classification of bargaining structures. For instance, in a single-employer—multiplant environment, a **narrow bargaining unit** might include only craft or professional employees in one occupational class. Police, firefighters, railroad workers, teachers, and airline pilots are examples of occupations typically represented in narrow craft bargaining units. At the other end of the spectrum are the broad bargaining units that might include all the production and skilled employees in a firm. Industrial unions bargain contracts that cover broad employee units in the auto, steel, farm equipment, state government, and textile industries.

Table 7.1 Types and examples of bargaining structures

	Employer interests covered		
Employee interests covered	*Multiemployer (centralized)*	*Single employer: Multiplant*	*Single employer: Single plant (decentralized)*
Craft (narrow)	Construction trades Interstate trucking Longshoring Hospital association	Airline Teacher Police Firefighters Railroad	Craft union in small manufacturing plant Hospital
Industrial or multiskill (broad)	Coal mining (underground) Basic steel (pre-1986) Hotel association	Automobile Steel (post-1986) Farm equipment State government Textile	Industrial union in small manufacturing plant

There are also intermediate cases in which more than one but not all of the various union-represented employees in a firm bargain in the same unit. A manufacturing plant where workers in several crafts bargain together would be such a case.

The columns of Table 7.1 depict the degree of centralization of employer interests in the bargaining unit. A unit that represents only one plant is an example of the most decentralized bargaining unit. An example of this would be a union that negotiates a contract for the electrical (or production) workers in one plant.

A highly **centralized bargaining structure** covers all the work sites of companies with the same collective bargaining agreement. Although multiemployer bargaining units are relatively rare in the United States, some do exist. In the trucking industry, for example, multiple intercity and interstate trucking companies have bargained a single contract (the National Master Freight Agreement) with the Teamsters union to cover their unionized drivers. The coal industry has long had a master agreement with the United Mine Workers that covers the unionized mine workers in coal companies that were members of the Bituminous Coal Operators Association. These multiemployer units are also found in the construction, longshoring, hotel, and (in some cities) hospital industries. In all of these cases, an employer association represents management at the bargaining table. These centralized agreements might cover multiple different employers in a given locality (such as all of the private hospitals in New York City that were members of the New York Voluntary Hospitals Association) or in an industry. Professional sports teams and unions also have this type of industrywide structure that bargains with a management association that represents the owners of the various teams.

An example of the intermediate case of employer centralization is when a single contract covers multiple work sites of one employer. The automobile, steel, and farm equipment industries and many state governments use this intermediate bargaining structure. In these cases, employers with more than one plant negotiate a single contract that covers employees in multiple work sites as opposed

to having a separate contract for each site. Typically, these company agreements are supplemented with local agreements that cover the working conditions that are specific to a given site.

Another intermediate employer case occurs in public school districts, where a single agreement typically covers all the unionized teachers across the various schools in the district. Police and firefighters also commonly have one contract that covers the various stations or districts in a city.

Determinants of Bargaining Structures

Bargaining leverage, public policies, and organizational factors are the major elements that affect the degree of centralization in bargaining structures. How each of these factors influences bargaining structure is examined below.

Bargaining Leverage

Unions can increase their bargaining leverage if they organize a large share of the product market; for example, employers that compete to make or sell the same products. One of the primary mechanisms for ensuring that workers don't compete with each other over differences in wages (often referred to as "taking wages out of competition") is to expand the bargaining structure to cover all employers making the same products.

This process is well illustrated by John R. Commons's account of early unionism among Philadelphia shoemakers. Commons described how in the absence of broad and aggressive unionism, shoemakers were harmfully affected by the expansion of the shoe market (the product market) that had developed in the early 1800s because of improved transportation.[26] As it became possible for nonunion shoemakers outside the Philadelphia area to transport their products into the Philadelphia market and sell them at a low price, the bargaining power of the unionized shoemakers in Philadelphia was weakened. It therefore became important for the Philadelphia shoemakers to organize their fellow shoemakers from the surrounding areas and to see them covered under the same wage agreement to equalize and raise the price of labor.

Unions that represent construction workers, for example, have a strong incentive to equalize the wage costs among competitive bidders on the same product. Thus, in the construction industry, unions prefer to bargain with the multiple employers who are involved in a specific construction project. For example, where builders across a city bid for the contract to build an office building, the union representing carpenters in that city will try to bargain in a structure that includes the contractors across the city.

Employers Prefer Centralized Bargaining Structures in Some Cases

It should not be inferred that unions always gain (and employers always lose) a tactical advantage in larger or more centralized bargaining structures. Employers in the service industries (such as hotels, restaurants, laundries, and local truck haulers) have sometimes found it to their advantage to form associations and to bargain in multiemployer units.

For instance, consolidating the bargaining function allows employers to avoid being whipsawed by local union leaders. Union **whipsawing** occurs when a union negotiates a bargain at one plant or company and then puts pressure on the next plant or company to equal or surpass the contract terms just negotiated at the first site. The unions in the airline industry used the whipsawing strategy until the late 1970s. By consolidating the bargaining structure, however, employers can sometimes reduce the possibility of union whipsawing.

Centralized Bargaining Can Stabilize Competition

In some cases, a centralized bargaining structure can serve the interests of an employer by stabilizing competition. Employers in small firms in a highly competitive industry may find it to their advantage to bargain centrally with a union because it can reduce the union's ability to whipsaw them. If a strike occurs, the centralized bargaining structure also ensures that no single employer can gain an advantage because all the firms are shut down simultaneously.

The benefit an employer gains from centralized bargaining is well illustrated by the apparel industry. Employers have come to depend on the stability the apparel unions have historically provided in their highly competitive industry. Labor costs are a significant component of total costs to the many small firms in the industry, and employers whose workers are unionized are receptive to the wage standardization unions impose. Wage standardization ensures that competition across firms does not depend on the ability of a firm to obtain low labor costs. UNITE HERE, a union that represents hotel and apparel workers, for example, likes the centralized bargaining structure because this structure helps it take wages out of competition in local areas.

Public Policies

Another crucial determinant of bargaining unit structures is the structure of the election unit that the NLRB determines in a representation election. If the NLRB certifies that the proper election unit is an industrial unit, for example, this precludes a craft bargaining structure.

The influence of the NLRB is well illustrated by events at General Electric (GE). During the 1960s, the unions representing GE workers attempted to engage in coalition bargaining but met with strong resistance from the company. **Coalition bargaining** would have meant that multiple unions representing GE employees would have sat at the negotiating table even when the contract with only one union was under discussion. The NLRB resolved this conflict when it ruled that unions could engage in coalition bargaining with GE. Other influential board decisions have been made that limit an employer's ability to withdraw from a multiemployer bargaining unit until an impasse has been reached.

Some have argued that the NLRB has exhibited a strong preference for larger bargaining units and thus has aided in the trend toward greater centralization. George W. Brooks was one of the most articulate critics of the board's preference for large production and maintenance bargaining units and against craft autonomy.[27] He argued that the preference for centralization reduced employees' freedom to

choose among alternative unions and made it impossible for individual members to effectively influence the direction of their unions. This, he believed, produced undemocratic and unresponsive unions.

Organizational Factors

The organizational structures of employers have also generated pressures to broaden the bargaining unit. In particular, the growth of large corporations and the centralization of managerial decision making have led unions to seek centralized bargaining structures. A fundamental principle underlying their efforts is that in many cases unions will benefit if the structure of bargaining is coterminous with the level at which critical management decisions are made. That is, when management is making most industrial relations decisions at the company level, then unions would often prefer to have bargaining occur at this level as well.

Evolving Bargaining Structure in the Telephone Industry

The telephone industry illustrates how management's organizational structure has influenced bargaining structure as the industry has evolved over many years. The gradual centralization of managerial decision-making power at AT&T that occurred from the 1940s through the 1970s led, first, to the merger of many of the independent unions of telephone workers into the Communications Workers of America (CWA), a national union, and then to the development of a centralized, nationwide contract and bargaining structure.[28]

After World War II, AT&T centralized its labor relations policy making in its corporate headquarters in New York. In the 1950s and 1960s, however, the CWA still bargained separately with each state affiliate of the Bell System. Consequently, throughout the 1960s the union sought to bring about a more centralized or national bargaining arrangement. Although the CWA succeeded in negotiating a national contract in 1974, the breakup of the Bell System into regional telephone companies in 1984 forced the union to return to a decentralized bargaining in its negotiations with the new regional telephone companies. But even after the breakup, because AT&T remained a company of national scope with a centralized management, bargaining involving AT&T employees remained centralized at the national level. Most of the newer entrants to the telecommunications industry such as Sprint and Comcast have remained nonunion, and some former Bell companies such as Verizon have avoided unions in their newer cellular divisions. Today, not only is bargaining once again decentralized to the level of individual firms, but also union contracts cover only a portion of the industry and in some cases only a declining portion of employees in a firm. We will return to the Verizon example in Chapter 8.

The Influence of Diverse Labor and Management Interests

In order to participate in centralized bargaining, local union officials or managers must give up some of their independent authority and abide by centralized decisions. Needless to say, local unionists and managers are not always eager to limit their own authority even when doing so may lead to a greater good for

the whole organization. Having to conform to the wishes of a centralized authority is less painful where there are common goals. Thus, another factor that influences the emergence of centralized bargaining structures is the extent of diversity in the objectives of local unions or individual companies and the degree to which traditions exist that generate loyalty or rivalry among these units. Box 7.10 discusses how a diversity of interests and other factors were overcome at Kaiser Permanente where an interesting coordinated national bargaining structure was created.

BOX 7.10

Creating a National Bargaining Structure at Kaiser Permanente

After forming a partnership with Kaiser Permanente (KP), the coalition of eight international and twenty-five local unions faced the question of what structure to propose in collective bargaining negotiations. In the past, each local had negotiated a separate agreement. Since the various local unions had gained experience working together in negotiating the initial partnership agreement with KP, their inclination was to have the local unions negotiate together and create a single national agreement with supplements that dealt with specific local issues. But KP officials were strongly opposed to this, fearing that a single common contract deadline would greatly increase union bargaining power because of the threat of a system-wide work stoppage.

A joint task force was created to explore whether a new approach could be developed. The initial idea that the union coalition favored and the task force proposed was that the coalition negotiate a master national agreement. When the coalition first proposed this idea to KP management in 1999, KP rejected it. Two of the concerns of KP management were that units located in labor market areas outside California would be unable to pay a national rate that was higher than existing rates in their region and that negotiating a master agreement would create considerable vulnerability to a system-wide strike. Since existing local agreements had different expiration dates, management felt safeguarded from the possibility of a major strike across the system.

After considerable discussion of these issues, facilitator John Stepp worked with both KP leaders and with the union leadership to fashion an alternative approach with various "gates" that the parties would move through before negotiating a national agreement. Either side could exit the process as it passed through these gates if they felt it was not moving in a constructive direction.

One important "gate" was agreement in principle that local labor market rates would continue to govern negotiations. Another critical step involved training potential participants in national and local negotiations in the concepts and skills of interest-based negotiations (IBN). Another key "gate" was that either party could pull out of the process at any point. (As it turned out,

neither party found it necessary to exercise this option.) KP and the union coalition eventually agreed to a revised proposal that called for extensive use of IBN problem-solving principles and the necessary training to prepare the parties for this very complicated process; a single integrated national negotiation that would allow local agreements to retain their respective deadlines (thereby addressing one of management's fears of a common expiration date); and a series of decentralized task forces that would focus on particular issues.

Seven bargaining task groups were established to address (1) wages, (2) benefits, (3) work-life balance, (4) performance and work force development, (5) quality and service, (6) employee health and safety, and (7) work organization and innovation. Each group engaged in an interest-based process of joint study, problem solving, and negotiations. These task groups reported their recommendations to a centralized Common Issues Committee co-chaired by union and management chief negotiators. In addition to negotiating a national agreement, new local agreements were to be bargained, even though most of the existing local agreements were not approaching their expiration dates. The Common Issues Committee sorted through the recommendations of the bargaining task groups and identified those that needed to be forwarded to local tables and those that would be applied uniformly across the system and therefore needed to be negotiated centrally by the Common Issues Committee. In the end, over 400 union and management negotiators were trained in IBN and participated in these negotiations. An agreement was reached in nine months and was ratified by over 80 percent of the rank and file.

Source: Robert B. McKersie, Susan Eaton, and Thomas A. Kochan, "Interest Based Bargaining at Kaiser Permanente," unpublished manuscript, MIT Sloan School of Management, 2002.

Resolving Different Issues at Different Bargaining Levels

Even in centralized bargaining structures, many issues are negotiated on a local basis. That is, in most cases the master agreement that is negotiated at the centralized level covers only broad issues that are universal in scope, such as wage rates and fringe benefits. Issues that are specific to a company or a plant, such as safety and health conditions, seniority provisions, production standards, shift changes, and overtime distribution, are often left to more decentralized levels of the bargaining structure.

James W. Kuhn has shown that the structure of bargaining extends even farther down to the level of the department or informal work group, where individual supervisors and work groups often negotiate unwritten side agreements or in fact ignore certain provisions of the contract. He called this activity **fractional bargaining**.[29] One of the most important developments in recent years has been the shift in bargaining down to lower levels.

Pattern Bargaining

Pattern bargaining is an informal way of spreading the terms and conditions of employment that have been negotiated in one formal bargaining structure to another. It is an informal substitute for centralized bargaining that seeks to take wages out of competition.

Students of collective bargaining first began noticing the importance of pattern bargaining after World War II. The War Labor Board (WLB) had encouraged the development of pattern settlements in two ways: first, by attempting to fashion a national wage policy, and second, by making the comparison between proposed wage settlements and other industry, area, and national settlements a prime criterion for deciding wage disputes.

The WLB was not the only source of pattern bargaining. Even before centralized bargaining appeared, and in some cases before unions even existed, steel companies, among other concentrated industries, tended to adjust their wages in tandem by following the lead of a principal firm, the U.S. Steel Corporation (now USX).[30] Once firms began following patterns in their pricing policies, it was only natural that unions began seeking patterns in negotiated agreements covering these firms.

Patterns within a Firm

Employees who work in the same firm typically are very aware of what other employees in the firm are receiving in the way of pay or fringe benefits and are very jealous of any differences that emerge. The practice of internal promotion (and other features of an internal labor market) within a firm serves to heighten such comparisons. Pattern bargaining follows when one negotiation closely follows the terms set in another negotiation. This is most common across the blue-collar employees of the same firm, but it can also occur where unions represent both blue- and white-collar employees.

One of the most complicated labor relations issues arises when two unionized firms merge and need to integrate their compensation, seniority, and related contract provisions. The airline industry has had considerable experience with this process because of the mergers that have taken place among major airlines in recent years. Integrating pilot contracts is especially complicated because firm-specific seniority determines not only compensation but also rules about layoffs and flight and aircraft assignments. Often this process has ended up in arbitration. In some cases, such as the merger of US Airways and America West and then the merger of US Airways and American Airlines, the process takes long enough that unions from three or more airlines become involved.

The Trend toward Greater Decentralization in the Structure of Bargaining

In the 1980s, some bargaining units began to decentralize their structures. The steel industry is an illustration. At the beginning of the 1970s, the ten largest steel companies negotiated as a group (although each company signed a separate contract). But by 1982, the number of companies that participated in the industry association had shrunk to eight. By 1986, the association had disbanded and bargaining with

the remaining firms began to take place on a company-by-company basis. Although the settlements that resulted after 1986 carried through many of the common features of the earlier ones, significant variations across the agreements were introduced: in wages, fringe benefits, **profit sharing**, work rules, and the extent of employee participation in management decision making.

Since the mid-1980s, the number of firms in the coal and trucking industries has declined substantially. In addition, there have been major declines in the number of workers covered by multiemployer or industrywide contracts in these industries. Some of the decentralization in bargaining structures has been caused by industry deregulation. By far the most significant effects of government policy on bargaining structures have come in recent years from the deregulation of product markets in trucking, airlines, and communications. In all of these cases, **deregulation** has opened the industry to pay wages and benefits below the unionized rates in the industry and has put pressures on unionized firms to seek labor contract terms in ways that will match the practices of the new competitors. As a result, firms in all three of these industries have attempted to decentralize their bargaining structures and gain more flexibility to compete with new, often lower-paying, companies that are entering the industry. As mentioned earlier, in trucking, before the industry was deregulated in 1980, the Teamsters had negotiated a national master freight agreement that covered intercity and interstate truck drivers. All the major trucking companies that hauled freight between cities and states or across the country were covered by this single national contract.

After deregulation, however, there was an influx of new nonunion firms and small independent contractors in the full-truckload portion of the industry. In addition, intense price competition emerged among the firms that remained highly unionized (essentially the "less than truckload" businesses that required large networks of terminals). The net result of these pressures was considerable decentralization in the bargaining structure. Several full-truckload companies broke out of the master freight structure and negotiated separate contracts with different wage payment and pension arrangements. At its peak, the Teamsters' National Master Freight Agreement covered over 800 companies and 450,000 workers. By 2016, this number had shrunk to less than a dozen companies.

In the airline industry, deregulation had the effect of weakening the pattern bargaining that had previously characterized negotiations with American, United, Northwest, and other major airlines. Under increased competitive pressure, pattern bargaining gave way to a more varied pattern of company-specific adjustments, including **two-tiered wage agreements** (that is, wage settlements that lowered the starting pay rates of future hires), changes in hours worked, wage cuts, profit-sharing plans, and employee memberships on company boards of directors.[31]

Summary

This chapter discussed union organizing and bargaining structures. These two central issues emerge early in the bargaining process. Union organizing determines

whether there will be bargaining in the first place, then the attention of the parties turns to the structure of bargaining.

An organizing campaign is initiated by union organizers, who typically include some full-time paid organizers and shop-floor employees. To receive authorization from the NLRB for a representation election, 30 percent of the election unit must sign authorization cards. Management typically launches a countercampaign in which it tries to convince employees not to vote for union representation. The NLRB regulates conduct during this organizing campaign by limiting union access to the work force and use of private meetings with workers (so-called **captive-audience speeches)**. There has been much debate in recent years over whether the NLRB has effectively maintained laboratory conditions in election campaigns.

The NLRB plays an important role in the decisions that are made about the appropriate election unit. The board takes into account both the degree to which employees have common interests and the administrative concerns of management. There is much strategic interplay in this process as the union and management try to shape an election unit in ways that increase the likelihood each will win the eventual election. Unions have not fared particularly well in their organizing efforts since the early 1980s. Management has developed personnel policies designed to weaken the appeal of unions and has conducted aggressive countercampaigns against unionization. But unions have not been passive either; they have turned to corporate campaigns and other new organizing tactics.

Bargaining structure determines which unionized employees are covered by a collective bargaining agreement. The two key dimensions are the scope of employee interests covered—whether craft or industrial—and the degree of centralization in firm coverage—which range from single-plant to multiple-company agreements.

Compared with bargaining structures that exist in other countries, bargaining structures in United States are relatively decentralized. Since the 1980s, previously centralized bargaining structures in trucking, steel, coal, and many other industries have either fragmented or collapsed.

Understanding the consequences of successful union organizing and the role the structure of bargaining plays requires a more detailed account of how collective bargaining agreements are negotiated. The next chapter turns to that issue.

Discussion Questions

1. Briefly describe the organizing process.
2. What are some common strategies management uses to keep unions out of the company?
3. Define what the term bargaining structures means and discuss some of the determining factors of bargaining structures.
4. What is pattern bargaining and how does it affect informal bargaining structures?

5. Why has collective bargaining in some firms and industries in the United States become more decentralized in recent years?
6. Explain what the term representation gap means.

Related Web Sites

Justice for Janitors:
http://socialjusticehistory.org/projects/justiceforjanitors/timeline

Graduate student organizing at Columbia University:
http://www.columbiagradunion.org/

Suggested Readings

Bronfenbrenner, Kate, Richard W. Hurd, and Ronald L. Seeber, eds. *Organizing to Win: New Research on Union Strategies*. Ithaca, N.Y.: ILR Press, 1998.

Freeman, Richard B., and Joel Rogers. *What Do Workers Want?* Ithaca, N.Y.: Cornell University Press, 1999.

Turner, Lowell, Harry C. Katz, and Richard W. Hurd, eds. *Rekindling the Movement: Labor's Quest for Relevance in the 21st Century*. Ithaca, N.Y.: ILR Press, 2001.

Notes

1. It is also possible for the NLRB to order an employer to bargain with a union as a remedy for a representation election that involves extensive unfair labor practices on the part of the employer. The NLRB has not issued this sort of "bargaining order" very often.

2. The NLRB can eliminate this practice if it interferes with the operation of the business.

3. "NLRB Conducted More Elections in 2015 but Percentage of Union Wins Held Steady," *Daily Labor Report,* March 1, 2015.

4. Ibid.

5. Research also has shown that national union characteristics play a role in success in union certification elections. More specifically, larger unions with greater internal democracy, less centralized bargaining, and lower strike activity have greater success in organizing both blue- and white-collar workers than other unions do. See Cheryl L. Maranto and Jack Fiorito, "The Effect of Union Characteristics on the Outcome of NLRB Certification Elections," *Industrial and Labor Relations Review* 40 (January 1987): 225–240.

6. A 1997 survey found that 47 percent of nonunion workers expressed a desire to join a union. See Seymour Martin Lipset and Noah M. Meltz, "Canadian and American Attitudes toward Work and Institutions," *Perspectives on Work* 1, no. 3 (1998): 14–19.

7. Myron Roomkin and Hervey Juris, "Unions in the Traditional Sectors: Mid-Life Passage of the Labor Movement," in *Proceedings of the Industrial Relations Research Association, December 28–39, 1977*, ed. Barbara D. Dennis (Madison, Wisc.: Industrial Relations Research Association, 1978), 212–222.

8. William N. Cooke, *Union Organizing and Public Policy: Failure to Secure First Contracts* (Kalamazoo, Mich.: W. E. Upjohn Institute for Employment Research, 1985).

9. John Paul Ferguson, "Eyes of the Needle," *Industrial and Labor Relations Review* 62 (January 2008): 3–21.

10. Richard B. Freeman and Morris M. Kleiner, "Employer Behavior in the Face of Union Organizing Drives," *Industrial and Labor Relations Review* 43 (April 1990): 351–365.

11. "NLRB Conducted More Elections in 2015 but Percentage of Union Wins Held Steady."

12. A list of corporate campaigns and analysis of their success is provided in Paul Jarley and Cheryl Maranto, "Union Corporate Campaigns: An Assessment," *Industrial and Labor Relations Review* 43 (July 1990): 505–524.

13. Kate Bronfenbrenner, "The Role of Union Strategies in NLRB Certification Elections," *Industrial and Labor Relations Review* 50 (January 1997): 195–212.

14. Adrienne E. Eaton and Jill Kriesky, "Union Organizing under Neutrality and Card Check Agreements," *Industrial and Labor Relations Review* 55 (October 2001): 42.

15. Ibid., p. 47.

16. Jody Hoffer Gittell, *The Southwest Airlines Way* (New York: McGraw Hill, 2004).

17. Harry C. Katz, Rosemary Batt, and Jeffrey H. Keefe, "The Revitalization of the CWA: Integrating Collective Bargaining, Political Action, and Organizing," *Industrial and Labor Relations Review* 56 (July 2003): 573–589.

18. "AFL-CIO Strategic Campaign to Boost Organizing at Comcast, Verizon Wireless," *Daily Labor Report*, March 5, 2004, A-12; "CWA Organizes More than 11,000 Workers at Former AT&T Wireless under Cingular Pact," *Daily Labor Report*, November, 28, 2005, A-8; "Verizon Neutrality Pact with CWA, IBEW Expires after Four Years; No Units Organized," *Daily Labor Report*, August 24, 2004, A-12.

19. Ibid.

20. Freelancers Union, https://www.freelancersunion.org/.

21. Restaurant Opportunities Center United, http://rocunited.org/.

22. "About," *Working America*, http://www.workingamerica.org/membership/about.

23. SherpaShare, https://www.sherpashare.com/.

24. Coworker.org, https://www.coworker.org/.

25. The Workers Lab, http://theworkerslab.com/.

26. John R. Commons, "American Shoemakers, 1648–1895: A Sketch of Industrial Evolution," *Quarterly Journal of Economics* 25 (November 1919), reprinted and revised in *A Documentary History of American Society*, vol. 3, ed. John R. Commons (New York: Russell and Russell, 1958), 18–58.

27. George W. Brooks, "Stability versus Employee Free Choice," *Cornell Law Review* 61 (March 1976): 344–367.

28. Jeffrey Keefe and Rosemary Batt, "Telecommunications Services: Union-Management Relations in an Era of Industry Re-Consolidation," in *Collective Bargaining: Current Developments and Future Challenges*, ed. P. Clark, J. Delaney, and A. Frost (Champaign, Ill.: Industrial Relations Research Association, 2003).

29. James W. Kuhn, *Bargaining and Grievance Settlements* (New York: Columbia University Press, 1962).

30. George Seltzer, "Pattern Bargaining and the United Steelworkers," *Journal of Political Economy* 59 (August 1951): 322.

31. Peter Cappelli, "Competitive Pressures and Labor Relations in the Airline Industry," *Industrial Relations* 24 (September 1985): 316–338.

8 The Negotiations Process and Strikes

THE COMPLEX DYNAMICS OF NEGOTIATIONS

Chapter 8 examines the process by which unions and employers negotiate collective bargaining agreements, continuing the analysis of the middle (functional) level of labor relations activity. It includes an examination of the dynamics of negotiations and the factors that lead to strikes.

Negotiations and strikes are the most visible parts of a collective bargaining system. The pressures of a contract deadline and perhaps the threat of a strike focus attention and clarify how important each party feels about critical issues and about the need to either alter or preserve current practices. From time to time, negotiations may produce strikes. But negotiations are not independent of activities that occur over time at the workplace or at the strategic levels of the bargaining relationship. The strategies and tactics each side uses in negotiations are likely to reflect the level of trust labor and management representatives have for each other at the outset of negotiations, and the results of negotiations will in turn affect the trust that carries over to the relationship of the parties during the term of the agreement. Thus, negotiations are a pivotal event that may reinforce or change the future relations of labor and management.

As we will see, many of the parties to collective bargaining today are attempting to bring a new approach to negotiations, often labeled *interest-based* bargaining or *mutual-gains* bargaining.[1] The new approaches seek to move away from more traditional **positional bargaining** as a way of increasing the potential for solving problems during negotiations. Thus, the negotiations process involves making choices over how to bargain and tactical decisions about how to conduct negotiations to best represent the parties' separate and joint interests.

This chapter uses the framework developed by Richard Walton and Robert McKersie to compare and contrast these two approaches to negotiations.[2] The Walton and McKersie framework is particularly useful for identifying the wide variety of pressures on and competing interests of the negotiators during the negotiations process.

THE FOUR SUBPROCESSES OF NEGOTIATIONS

Although Walton and McKersie originally developed their framework to describe and analyze the traditional positional approach to bargaining that was quite common in the 1950s and 1960s, their work also served as the theoretical basis for interest-based techniques that were developed in the 1980s. We will summarize their framework first and then discuss how the dynamics of bargaining varies depending on the approach taken. Walton and McKersie argued that there are four **subprocesses of bargaining** in the negotiation of any collective bargaining agreement: distributive bargaining, integrative bargaining, intraorganizational bargaining, and attitudinal structuring. Each subprocess is analyzed below, as are the interrelations between the various subprocesses.

Distributive Bargaining

Distributive bargaining involves the aspects of negotiations in which one side's gain is the other side's loss. Distributive bargaining is win-or-lose, or zero-sum, bargaining. Examples of issues that most often are distributive in nature include wage rates and fringe benefits. Labor gains more income from a higher wage, while management gives up some profit to pay the higher wage.[3] Similarly, workers lose when a fringe benefit (e.g., paid vacation time) is reduced, while management gains higher profits with the reduction of paid vacation time.

These issues lead to conflicts across the bargaining table. Determination of how distributive issues are resolved involves the exercise of bargaining power. The union, for example, tries to convince management to agree to its request for a higher wage by threatening to strike if management does not give in to this demand. Meanwhile, management may threaten the union with a lockout to be followed by the hiring of replacement workers or with a plant closing if a strike were to occur and might also point out to the union that a wage increase would entail additional costs to the work force in the form of reductions in the number of employees. Thus, the components of bargaining power, strike leverage, and elasticity of demand for labor are the critical determinants of how distributive conflicts are resolved.

Distributive issues are at the center of the negotiation of a collective bargaining agreement, since disagreement about the distribution of labor's product is at the core of labor-management relations. Nevertheless, it would be a mistake to lose sight of the fact that there are other dimensions to bargaining.

Integrative Bargaining

Integrative bargaining issues and processes are those in which a solution provides gains to both labor and management, leading to joint gain, or win-win bargaining. Labor and management both gain when they resolve problems that are impeding productivity and a company's performance. If the productivity of the firm increases, the employees can benefit in the form of higher compensation or shorter work hours while the firm can benefit in the form of greater profits.

Numerous issues at the workplace create opportunities for integrative gains. Work is rarely performed in the most productive way possible: cumbersome practices and outdated work rules often stand in the way of peak performance. Labor and management thus can improve the performance of a firm by addressing such practices and changing job classifications or seniority rules or in other ways creating procedures that promote high performance.

The introduction of new technology often creates an opportunity for integrative gains. The effective use of new technology can increase productivity, which can then provide rewards to both employees and the firm. Yet merely introducing new technology on the shop floor or in the office does not necessarily lead to productivity increases. Typically, technology works best when it is accompanied by changes in work practices: the number of employees might have to be reduced, training programs might be necessary, and job assignments might need to be adjusted. Integrative bargaining entails the negotiations about how and to what extent productivity-enhancing work rule changes are made as a new technology is introduced.

Why is it that the parties do not automatically make integrative changes, since such changes hold the possibility of joint gain? In other words, why is integrative bargaining so difficult? The answer to this question touches on one of the key issues in industrial relations.

Why Integrative Bargaining Can Be So Difficult

Integrative bargaining is an ever-present and sometimes difficult component of the negotiations process for several reasons. For one thing, although integrative issues contain the possibility of joint gains for both sides, it is also true that both parties are confronted with the question of how to divide up any joint gain. In effect, any integrative bargain also prompts distributive bargaining, and the difficulty in resolving the distributive issue can make integrative bargaining difficult.

Consider, for example, what happens when a new profit sharing plan is introduced at a work site. If it is effectively introduced, the new plan offers the possibility of joint gains in income to both employees and the firm if the new plan stimulates the adoption of more efficient work practices. Yet the parties involved cannot escape the fact that if productivity goes up when a profit sharing plan is implemented, decisions must be made about how the increased income that technology makes possible will be divided. Thus, every integrative bargain prompts a distributive discussion. It can be difficult for the bargaining parties to agree on how to resolve the distributive issue (how to share the integrative gain). Thus, integrative solutions are sometimes blocked by labor and management's disagreement over how they would divide up the gains that result from problem resolution.

Integrative Bargaining and Distributive Bargaining Involve Different Tactics

Integrative bargaining also can become difficult when the parties send confusing signals and mixed messages to each other. This confusion springs from the fact that integrative bargaining and distributive bargaining involve very different tactics

and negotiating styles. Table 8.1 lists the different tactics used in distributive and integrative bargaining.

Because distributive bargaining concerns issues for which one side's gain is the other side's loss, negotiators often use specific tactics to increase their chances of doing well. They may overstate demands, withhold information, or project a stern and tough image. In contrast, effective integrative bargaining, involves identifying and solving problems. The tactics that are typically effective in this approach include the open exchange of information, listening to multiple voices, and sharing information. Distributive and integrative bargaining styles contrast sharply with each other.

The problem for both labor and management is that it is difficult to effectively use both distributive bargaining and integrative bargaining in the same negotiations. One side might settle into a distributive bargaining mode just at the moment when the other side is ready for integrative problem solving. And when the latter party confronts hard distributive tactics, it might become discouraged about the possibility of integrative bargaining, making it difficult for such bargaining ever to occur.

Another reason why integrative bargaining can be difficult is that the problems that impede productivity are not always obvious to the two parties, even when they agree about how to divide up the possible joint gains. The conflicts in these two bargaining styles makes negotiations hard enough, but there are two other subprocesses in the bargaining process to add to the mix.

Intraorganizational Bargaining

Intraorganizational bargaining occurs when there are different goals or preferences within either side, either the union or management. Intraorganizational bargaining arises when the members of the union (or the union negotiating

Table 8.1 Tactics of distributive bargaining and integrative bargaining

	Distributive tactics	Integrative tactics
Issues	Many issues	Specific concerns
Positions	Overstate real position at outset Make demands	Focus on objectives No final positions
Use of information	Information is power Hold it close Use selectively	Share information openly Treat information as data
Communication process	Controlled Single spokesperson Use of private caucuses to air internal differences and discuss responses	Open Multiple voices Use of subcommittees
Interpersonal style	Hard bargaining Focused on own goals and interests Short run; not concerned about long-term relations Low trust	Problem solving Concern for mutual goals Concerned about long-term relations High trust

team) have different priorities about what the union should strive for during negotiations. Senior union members may prefer that the union focus its negotiating strategy around attainment of better pensions, whereas younger union members may prefer wage increases. Or the craft workers in the union might be in favor of restricting the use of outside contractors to maintain machinery in the plant, whereas production workers might be concerned with having safer conditions on the line.

Management may also have different preferences or opinions about what is feasible in negotiations. Corporate management, for example, may favor strict adherence to the seniority policies used in other plants of the company, whereas local plant managers may prefer to negotiate for a seniority procedure that has never been tried elsewhere in the company.

Intraorganizational conflict also can occur when one or both of the parties bring insufficient decision-making authority to the bargaining table. Nothing is more frustrating to negotiators than to realize that they are engaging in **surface bargaining**—that is, bargaining with a representative who lacks the authority necessary to make commitments that will stick in his or her organization. For example, on either the management or union side a person who knows or has the authority to revise their respective side's maximum offer (or maximum concession) may not be present at the bargaining table. When a negotiator has inadequate decision-making power or authority, the probability of an impasse or a strike increases because the opponent may to a strike to force the real decision makers to the bargaining table. This source of impasse is especially prevalent in the public sector or the quasi-public sector, such as not-for-profit hospitals.

Consider, for example, the severe intraorganizational conflict that appeared in the dispute between a teachers' union and a public school district that is described in Box 8.1. This impasse was caused primarily by intramanagement conflicts. The union's only recourse was to call an impasse, bring in a mediator, and put pressure on the school board to resolve its internal differences and get on with the negotiations.

This example illustrates that intraorganizational conflicts are not solely a union phenomenon. It is true that the organizational structure of unions makes it more difficult for them than for most managements to resolve internal power struggles. However, in firms where the locus of decision-making power is unclear or widely dispersed in management, open conflicts are likely to occur and carry over into the negotiations process.

Intraorganizational conflict is common in the public sector because of its complex decision-making structures and numerous political constituencies. Another likely environment for intramanagement conflicts is multiemployer bargaining structures in industries where there is wide variation in the goals or financial status of the employers.

Attitudinal Structuring

Negotiations often involve a lot of uncertainty. Uncertainty arises from the difficulties the parties face in anticipating how much strike power they have and the complications involved in interpreting each other's intentions.

BOX 8.1

Intraorganizational Conflict in a School District

Three years before the negotiations in question began, the teachers had engaged in a bitter strike. The school board president and two other members of the current board had been members of the board at the time of that strike and still bore extreme hostility toward the teachers. The attitudes of the other four members of the board were less antagonistic attitudes toward the teachers.

The board's professional negotiator was also a carryover from the strike. The relationship between him and the union was one of mutual and extreme distrust and antagonism. Thus, as the new negotiations got under way, the board and the teachers were still locked in a hostile relationship.

Shortly before negotiations began, the board hired a new superintendent of schools. Repelled by the animosity between the teachers and the board, he sought to take a more conciliatory stance toward the union. Before long, bitter confrontations had developed between the board's negotiator and the new superintendent.

During the summer months, the superintendent held informal talks with the union president and together they worked out a tentative agreement on a contract settlement, subject to the approval of the board and the union membership. The board refused to approve the agreement, partly because of objections the board's negotiator made. Throughout the course of the negotiations, the superintendent tried to persuade the board to dismiss the negotiator.

Because these events transpired over several months, the teachers pressured their union leaders to call an impasse and began to engage in slowdowns and other forms of job actions short of a strike. During the months that the superintendent and the school board's negotiator were at loggerheads, each arranged separate meetings with union representatives, one trying to work through a mediator and the other trying to keep the mediator out of the process. Meanwhile, both the superintendent and union leaders were lobbying members of the board to obtain the swing vote necessary to win the power struggle.

Obviously, no progress was made in negotiations until the internal dispute was resolved. The superintendent ultimately emerged as the victor in the power struggle and the board dismissed its negotiator. The superintendent then brought in a new management negotiator with whom he could work, and a contract was successfully negotiated.

Source: One of the authors observed the events described in this box in the negotiations in a public school district in the northeastern United States.

Negotiations also can be extremely emotional. The stakes involved are usually high, and the tactics often used in traditional negotiations—threats, bluffs, grandstanding for one's constituents, exaggerated anger—are hardly conducive to building rapport among the parties to the process. Add to these the fact that any single round of negotiations typically is part of a larger and longer-term power struggle between parties separated by an inherent conflict of interests. One can readily see why hostile attitudes can, and sometimes do, develop in a bargaining relationship and why they can constrain effective negotiations.

Consequently, **attitudinal structuring** (the degree of trust each side feels or develops toward the other side) is another subprocess in bargaining. If labor and management have a high degree of trust in one another, then it should be easier for the parties to engage in integrative bargaining, since trust can make it easier to identify problems and solutions. In contrast, interpersonal mistrust can make it difficult to move from initial bargaining positions to compromise settlements. Mistrust hampers communications between the parties and can lead both parties to hold back on concessions they might otherwise be willing to make. Obviously, intense hostility can get in the way of serious discussion of the substantive merits of the issues.

Labor and management can try to build trust by meeting prior to or during negotiations in forums that facilitate an open exchange of views and concerns. If union leaders and managers are working together to build trust, share information, develop employee participation processes, and consult on critical issues on an ongoing basis, the trust that develops from these activities may carry over to the negotiations process. Alternatively, actions that demonstrate a lack of trust to the rank and file, union leaders, or managers during the term of a contract will likely carry over to influence negotiations as well.

Personality traits of negotiators also play a role in building trust. Some personality traits, such as excessive authoritarianism, have been found to hinder the compromise that is necessary to bring about negotiated settlements.[4] A recent study showed, for example, that the negotiators' "perspective-taking ability," that is, their ability to see the other party's point of view, increases the likelihood of a negotiated agreement.[5] Those who are philosophically opposed to unions, however, or those who are opposed to the role managers play in a capitalistic society may see bargaining issues as matters of great principle and thus find compromise difficult. Acceptance of the legitimacy of the other side's point of view can facilitate conflict resolution. The absence of such acceptance in negotiations increases the probability of an impasse.

MANAGEMENT'S OBJECTIVES IN NEGOTIATIONS

The formation of management's **wage objectives** (or targets) is a critical part of the negotiations process. Negotiators often have limits for bargaining, or the bottom-line terms they would accept short of taking a strike. The development of these wage targets is the heart of the internal management planning process that takes place before or during the early stages of negotiations.

While wages are important to management, they are not the only critical issue a labor agreement addresses. However, how management creates targets for other bargaining issues occurs is not very different from the process it uses to create wage targets. Thus, the discussion that follows has general applicability.

Since top management is responsible for approving or authorizing any wage target in bargaining, the negotiating team must recommend targets that reflect top management's goals for the organization. If the negotiating team recommends a wage target that is too high, top management might reject the recommendations and the negotiating team would lose influence. On the other hand, these targets play a pivotal role in the negotiations process once they are established because they indicate the negotiator's latitude for compromise.

Thus, the labor relations staff needs to develop bargaining targets that are realistic and achievable. The range of criteria that go into this decision-making process are discussed below. Management also must take the union's preferences into account when setting targets for bargaining. Unless management is powerful enough to totally dominate bargaining, the management team must consider how acceptable its wage offer will be to the union.

THE UNION'S TARGETS

Unions will usually establish their own targets for wage bargaining. In setting those limits, union leaders employ two basic criteria for evaluating a proposed settlement: (1) the potential effects of the settlement on the real wages of the membership (the wage adjustment minus any increase in the cost of living); and (2) a comparison between the proposed settlement and settlements with other bargaining units or with other employees.

Comparisons with other units are important to unions for both economic and political reasons. Remember, the union's economic goal is to take wages out of competition. This leads unions to favor wage increases that maintain pattern bargaining. Union leaders also face pressure from their members to compare their negotiating proposals with the settlements other unions have achieved with the settlements achieved by other unions.[6] Rank-and-file union members often evaluate their leaders by comparing their own settlement to settlements achieved by leaders of other unions or granted by other employers.

Comparisons are especially relevant when one or more rival unions might potentially challenge another union for the right to represent a group of employees. This has been an important consideration in bargaining among mechanics in the airline industry in recent years. Two different unions, the International Association of Machinists (IAM) and the Aircraft Mechanics Fraternal Association (AMFA), have been competing to represent these employees at various airlines.

A union will try to induce a company to accept a higher figure than it might otherwise do in the wage-setting portion of bargaining. A union's bargaining power will determine the extent to which management takes the union's preferences into account.

Local Labor Market Comparisons

One factor an employer considers when setting its wage targets is the prevailing wage level in the **local labor market.** If the employer ignored the local labor market and allowed wages inside the firm to fall lower than wages at the other employment sites, high employee turnover might follow. Low wages also might produce a dissatisfied work force and difficulty in recruiting workers with the skills needed to perform a job effectively. Conversely, setting wages too high relative to the local labor market invites an excess of qualified job applicants and unnecessary costs.

This does not mean that the employer will try to pay the lowest wage possible that will attract workers to a given job. In the context of the local labor market, the employer must choose the quality of employees it wishes to hire. It must decide if increasing the wage level will attract employees of sufficiently high quality and whether it will decrease indirect personnel costs (such as training, turnover, and supervision).

Labor market comparisons are more likely to be used in bargaining relationships where the union is weak. Where unions are strong, they will use their bargaining power to do better than the local labor market and gain what they consider to be a fair wage.

Product Market Factors

Product market comparisons play an increasingly important role in management decision making. The ability of current or potentially new competitors to compete on the basis of lower labor costs has been the dominant factor in management's drive to hold down or reduce wages, particularly the wages of employees in entry-level and low-skill jobs. Threatening to outsource such work has also been an important part of management's approach to negotiations in recent years.

The Firm's Ability to Pay

The effects of wage adjustments on the profits of the firm also influence management's wage target. Employers in the process of setting a target wage examine their **ability to pay** wage increases.

A union generally is reluctant to give a firm a lower settlement on ability-to-pay grounds unless the firm can demonstrate that a serious economic crisis would result otherwise. Union leaders and union members often must be convinced that their wage proposal would lead to considerable employment loss before they will agree to a lower settlement. For example, in 1979, it took the threat of bankruptcy plus government pressure to convince the UAW to agree to give Chrysler wage concessions below the level that had been set by pattern bargaining in the auto industry. Ability-to-pay considerations have become more important in recent years. In response to heightened competitive pressures, management has preferred to shift away from externally driven wage criteria in favor of criteria that connect wages more closely to the performance of a firm or its workers.

Thus, management has tried to shift away from factors such as wages in the industry or increases in the cost of living and toward the firm's ability to pay.

Internal Comparisons

Every negotiation is carefully watched by a firm's other employees. Management must consider how a wage settlement might influence the expectations and demands of other employees in the firm regardless of whether those employees are represented by unions. Management, for example, often considers whether wage increases for unionized hourly workers will lead to pay increases for supervisors and other white-collar employees outside the bargaining unit. One reason management give pay increases to white-collar employees is such increases weaken these employees' potential attraction to unionization.

The Dynamics of Management's Decision-Making Process

So far we have painted a rather static picture of management's decision making. Yet the actual process of decision making over the course of a bargaining cycle (from the pre-negotiation planning stage to the signing of the final agreement) is a dynamic one. The process is replete with ambiguities over who has the authority to set policies, conflicts among decision makers over the appropriate weight to be attached to different goals, and power struggles among competing decision makers.

The process by which management establishes bargaining strategies involves extensive intraorganizational bargaining that is every bit as intense as the bargaining between the union and management. Because the successful resolution of internal differences is a prerequisite to a smoothly functioning bargaining process, it is important to understand how firms prepare for negotiations.

To provide a more complete picture of how management prepares for collective bargaining, Box 8.2 describes a typical case. This firm is preparing to negotiate a contract with the major bargaining unit in its largest manufacturing facility. The contract traditionally sets the pattern for the economic settlements with several smaller units at other locations.

Before negotiations (or very early in negotiations), the labor relations staff tries to predict as closely as possible what it will take to get a settlement. But ultimately the staff is ready at all times to revise its estimates based on new or better information about the union's position as the negotiations proceed.

The case in Box 8.2 illustrates the diversity of interests that exists in the different levels of any modern company. It shows that the development of a company strategy for negotiations is a highly political process, one in which the different goals of various groups must ultimately be accommodated. Although the labor relations staff serves as a key participant in the development of the strategy, the concerns of operating management, financial staff, and other interest groups in the corporation are also integral to any final decision.

It is interesting to examine how preparations for traditional negotiations compare to preparation for an interest-based bargaining process. Box 8.3 draws on the experiences of the same firm as it prepared for a recent round of interest-based

BOX 8.2

Management's Preparations for Negotiations in a Typical Firm

Stage One: Input from the Plants

The first step in the process of preparing for negotiations takes place at the plant level.[7] The plant labor relations staff holds meetings with plant supervisors to discuss problems they have experienced in administering the existing contract. From these discussions, the staff compiles a list of suggested contract changes. At the same time, the staff also conducts a systematic review of the grievances that have arisen under the current contract and collects information on local labor market conditions and on the wages in other firms in the community.

The staff then holds a meeting with the plant manager, who raises the industrial relations problems the company has confronted in the plant. The concerns of management are classified into two groups: contractual problems and problems that should be addressed outside the negotiating process. In addition, the staff asks the plant manager to rank suggested contract changes based on their potential for making a significant improvement in plant operations.

Stage Two: Input from Higher Levels of the Firm

Next, a series of meetings is held at the division level that involves the division labor relations staff, operations managers at the division level, and the corporate labor relations director and staff. From time to time, outside industrial relations consultants sit in on these division-level meetings. Here the concerns of the various plants are evaluated against two criteria: (1) the operational benefits expected from proposed contract changes; and (2) the likelihood that the desired changes can be achieved in the negotiations process.

The corporate labor relations staff plays a vital role in these division-level discussions, since the expected benefits of different contractual changes can be a matter of dispute across the various plants. In addition, the division labor relations staff is responsible for carefully examining the contract language that exists in the various local agreements for inconsistencies or problems that could be removed by clauses that reflect corporate labor relations preferences. Sometimes the plant labor relations representatives object to changes suggested at the division level because they do not correspond to the priorities of the plant officials and because the existing "discrepancies" may be serving a useful purpose in the plant.

The corporate labor relations staff works closely with the vice-president for finance to develop wage targets. Information on plant labor costs, corporate earnings, and the long-term financial prospects of the company and the industry are built into the wage target the corporate staff ultimately recommends.

Stage Three: Input from Research

A research subgroup in the labor relations staff of the company also conducts background research that is used in management's preparations for negotiations. At least a year and a half before the opening of formal negotiations, the research staff begins to prepare the background information necessary for developing the company's proposals.

The researchers use a database on the demographic characteristics of employees and analyze personnel statistics such as turnover, absentee, and grievance rates. They also monitor internal union developments, specifically resolutions the union has passed at its conventions, union publications, and union leaders' statements about the upcoming negotiations. In addition, they survey plant managers for their views on their relations with the union and the problems they would like to see addressed in the negotiations. The staff also consults plant labor relations staff members to obtain their suggestions. This firm probably invests more resources and assigns more authority for bargaining preparation to its research staff than do most other corporations.

The research staff is ultimately responsible for putting together a summary report that goes to the vice-president of industrial relations and the corporate director of compensation. These executives then work with the manager of the research and planning department to develop targets for bargaining.

Stage Four: Final Preparations

The final step in management's preparation for negotiations is a meeting that includes the corporate labor relations staff, the chief executive officer, and the board of directors. At this meeting, the corporate labor relations director presents the proposed wage targets and other proposed contract changes for board approval and states the reasons for seeking the proposed changes. Sometimes this meeting does not take place until after the first negotiations session with the union. The industrial relations director might prefer to wait until then because it may be useful to hear from the union before he or she makes a final recommendation to top management. This helps the industrial relations director identify the relative importance the union is likely to give to pay issues and the intensity of the union's concern about other areas of the contract.

One labor relations director described to us how he presents his recommendation to top management in this way:

> I always number my proposed target settlements as proposed settlement target number 1. Someone once asked me what that meant. I said that this is what I think it will take to get a settlement but I number it because I may have to come back to you at some point with my proposed settlement number 2 or even my proposed settlement number 3, et cetera.

BOX 8.3

Preparing for Interest-Based Bargaining: One Management-Side Bargainer's Account

The shift to a new approach to negotiations was a gradual and natural outgrowth of our employee involvement (EI) process. We took some steps in this direction in negotiations 10 years ago and more in our most recent round of bargaining. All of us—union and management representatives—have been training in the EI problem-solving tools and we essentially asked each other: Why can't we apply them in negotiations?

As in the past, we would keep a list of issues and problems that came up during the term of the agreement in a file and start preparations by reviewing this list and interviewing plant managers for their concerns. But this time, when we brought this material together and met with the top division executives, the director of industrial relations said he didn't want to take a laundry list of issues into negotiations only to discard some or many of them. Instead, he asked his colleagues: "What are your critical problems? What are their root causes? What are the costs involved? If we can agree on these things, then let's go into negotiations and fix them."

Paring the list down and agreeing on what we needed to achieve to solve our problems (which were severe at that particular time) involved tough internal discussions and negotiations. Eventually, the chief executive officer had to decide on a couple of key points since these could conceivably affect the long-term future of the operations and, if we took the hardest line being advocated by some managers, would jeopardize the future of the labor-management relationship.

As a result, we brought about eight or nine issues to the table and the union only brought 15 or 16. In the past we would have both had a lot more.

We had much smaller bargaining committees than in the past as well. We had one representative each from legal, finance, manufacturing, and labor relations, along with the industrial relations director who chaired the committee.

We set up a big round table for bargaining, in a room complete with flip charts and all the other supports needed for brainstorming and problem solving. In the actual negotiations, from time to time we brought in specialists with expertise on particular issues such as the way the transfer language in the contract actually worked. Instead of simply exchanging proposals and working from each other's lists, we scheduled times to take up issues and problems. When we did so, we asked: Why is that a problem? Who's affected? What might we do about it? How would it affect things? Can we live with the solutions proposed?

We still had discipline at the table. We had chief spokespersons. In fact, we got very upset and disappointed when at one point the process broke down. When we started talking about overtime, we had already done some joint staff work looking at some pilot programs we had started in a couple of settings to let the union handle how overtime is distributed. This is always a big problem and headache for management, and [it is] a costly issue. The staff had pretty much agreed privately to extend the pilot approach to the whole bargaining unit, but when the issue came up for discussion, the manufacturing representative on our team said: "We'd never agree to that!" We read him the riot act later in private for springing this on us, but it essentially killed discussion of this issue, and we never did get the job done on this issue.

As we got into the tough economic issues, bargaining took on more traditional features. These were very tough and the union leaders needed to be able to demonstrate to their constituents [that] they squeezed us as hard as they could to get the best deal possible. We understood this.

Still, there was better communications, and we never worked past 8 p.m.

bargaining. While much of the background research and information gathering is similar, some of this is done jointly with the union. In this case, the problem-solving processes that had been put in place in the company-union relationship at the workplace provided the foundation for taking a problem-solving approach to negotiations.

UNIONS' AND WORKERS' PREPARATIONS FOR NEGOTIATIONS

This section reviews the common procedures unions and workers follow during the negotiation of a collective bargaining contract. This material parallels the discussion of the procedures used by management in preparing for negotiations described above.

The Role of the Union Negotiating Committee

The union is represented by a negotiating committee in negotiations with management. The makeup of the **union negotiating committee** varies across unions, although it typically includes some union officers, support staff (such as members of the local or the national union's research staff or both), and elected worker representatives. Often the leaders of the union's negotiating committee are the highest elected officers of the union that is covered by the collective bargaining agreement under negotiation. Some unions, such as local construction, hotel and restaurant, or trucking unions, tend to rely on hired business agents to lead their negotiations.

The negotiating committee will meet several times before the start of negotiations to formulate the union's list of demands and to begin to establish expectations about what the union can win in negotiations. Before these meetings, the negotiating committee will solicit demands from union members, either directly through meetings called to discuss the upcoming negotiations or through polls. In the UAW, for example, elected representatives from the local unions meet in a convention and vote on bargaining resolutions during preparations for companywide bargaining. The UAW leadership also consults union members during the negotiation of plant contracts that supplement the companywide agreements.

A union negotiating committee typically also receives information and advice from the national union's research staff during its preparations for bargaining. The information provided frequently covers the financial performance of the company, forecasts the future performance of the company and the economy, and summarizes recent settlements in other unions or the pay improvements unorganized workers in the same city, firm, or industry have received.

Some unions, such as the Air Line Pilots Association (ALPA), do extensive research and analysis of economic developments in their industry and of the financial situation of each company. Prior to entering negotiations, the ALPA research staff conducts extensive briefings with the bargaining committee of an airline and in some cases, such as at Continental Airlines, meets with company representatives to compare financial data and analysis. It is not uncommon for union and company research staff to share information with each other if for no other reason than to avoid debates over some of the basic facts each side needs to prepare their team for negotiations.

Many unions now use surveys, focus groups, and/or direct interviews with rank-and-file members to gather information about their concerns and their priorities for negotiations. This serves as a two-way communications process. It both provides data on the priorities of rank-and-file members and begins to engage the rank and file in the negotiations process by informing them of some of the issues that may come up.

Acquisition of Strike Authorization If an Impasse Is Reached

If the union comes to an impasse with management during the negotiations and is considering going on strike over unresolved disputes, two steps occur. In local contract negotiations, the union's constitution typically requires the local to seek **strike authorization** from the national union. Strike approval is an important process because, among other things, it enables striking workers to receive strike benefits from the national union's strike fund.

A union considering a strike will also typically poll its members. The strike vote serves a dual purpose: it tells the union leadership whether the union's members support such an action and it helps rally the workers around the purpose of the strike.

Contract Ratification

When an agreement is reached between the union's negotiating committee and management's representatives, the union proceeds through its **contract ratification** procedures. Here there is much variation in the exact procedures unions use. The first step some unions take is to send a proposed agreement to a council made up of lower-level union officers. This council includes local union officers when a companywide agreement is negotiated (as in the steel and auto industries). Union constitutions typically also require that the workers covered by a negotiated agreement vote on any proposed settlement.

There are some notable exceptions to the normal pattern of union members voting on proposed contracts. But in the usual case, workers must approve contract settlements, often by majority vote. This sort of voting is an example of participatory democracy in this critical aspect of union decision making.

The Role of Union Leaders in Shaping Strategies

The actual bargaining demands of unions reflect more than just an averaging of their members' preferences. Several factors combine to produce the complex process by which union leaders arrive at their bargaining objectives.

First, in addition to considering the preferences of their members, union leaders must evaluate how likely it is that objectives can be attained. Unrealistic goals must be discarded during pre-negotiation planning sessions or early on in negotiations.

Second, union leaders must take into account the varying political influence of subgroups within the union. Older or more skilled workers, for example, may be more politically influential than other members. Thus, the objectives leaders ultimately select may reflect some workers' goals more than others.

Third, union leaders must also be concerned about the long-term survival of the union and must take steps to preserve those interests. However, there is always the risk that union leaders will emphasize **union security** at the expense of member preferences.

Finally, a central job for union leaders, like all leaders, is to lead! Union leaders must weigh strategic options, make decisions, and secure the ongoing support of their members for the decisions they make.

One of the keys to union leadership is effective internal communication. Union leaders need regular upward communication from the rank and file and from local union officers. Effective union leadership also requires that decision makers communicate their activities and decisions back to the members. Unions use such techniques as opinion surveys, satellite hookups, television advertising, and the Internet to communicate with their members. Indeed, the Internet is becoming a key resource in bargaining today. Union leaders are learning that they must develop the skill to use this tool to communicate with members, for it is certain that rival groups in the union will have those skills. In one case, ALPA found that the tentative wage agreement it had reached with Delta Airlines was criticized on a rival group's website before the union team could even describe its terms to union members! Thus, the means of communication in unions and the role

of communications in negotiations in general are changing rapidly in the age of the Internet.

THE CYCLE OF TRADITIONAL NEGOTIATIONS

Negotiations often proceed through a cycle in which the four subprocesses of bargaining emerge and interrelate.[8] A typical cycle for a traditional negotiations process is described below.

The Early Stages

In the initial stage of a traditional negotiation, the parties present their opening proposals. This stage often involves a larger number of people than will be involved in the negotiations of the final agreement. The union, for example, may bring in representatives from various interest groups and several levels of the union hierarchy. These people participate in developing the initial proposals and later become involved in securing ratification of any agreement. The involvement of all these different representatives can smooth the process of intraorganizational bargaining in the union.

The union then presents proposals that cover the entire range of its concerns. Some of the proposals will be of critical importance and will be at the heart of the discussions as the strike deadline approaches. Some are important but may be traded off at the last minute. Some may be translated into more specific demands at a later stage of bargaining or may be issues to which the union will assign a high priority in some future round of negotiations. Other issues are of low priority and will be dropped as negotiations proceed into the serious decision-making stages.

The Presentation of a Laundry List

The union's presentation of a **laundry list** of issues serves several purposes. It allows union leaders to recognize different interest groups by at least mentioning their proposals. Some unrealistic demands will be aired, the problems underlying these demands can be explored, and the employer can then reject these demands. This process takes the pressure off union officers who might otherwise appear to have arbitrarily nixed some group's pet proposal. In a laundry list, either side also could introduce issues that it hopes will be pursued in future negotiations.

Presenting a long list of proposals and inflated demands as a first step might also be a useful way to camouflage the real priorities of the union. Or a long list of proposals could be helpful in integrative bargaining by facilitating trades across issues.

Behavior of the Employer in the Early Phase

The behavior of employers at the outset of bargaining varies considerably. Some employers will present a set of proposals to counterbalance the union demands. Other employers will receive the union demands and promise a response at a future negotiating session. Many management representatives prefer to delay

making any specific proposal on wages or other economic issues until well into the negotiations process. Because the wage issue can be emotional and divisive, management often tries to resolve nonwage issues first.

Management may also initially try to camouflage its bottom-line position, and it, too, may have unresolved internal differences at the start of negotiations. In some firms, a decision on the bottom line is not made until after the union offers its initial proposals and gives some preliminary indication of its priorities.

In the early stages, the speakers for each side will argue strongly and often emotionally for the objectives of their constituents to determine how strongly the opponent feels about the issues at stake. It should be no surprise that these initial stages are the forum for a good deal of grandstanding by both parties. Such grandstanding may also be a part of intraorganizational bargaining.

The Middle Stages of Negotiations

The middle stages of negotiations involve more serious consideration of various proposals. The most important tasks performed in the middle stages of bargaining are (1) developing an estimate of the relative priorities the other side attaches to the outstanding issues; (2) estimating the likelihood that an agreement can be reached without a strike; and (3) signaling to the other side which issues might be the subject of compromise at a later stage of the process.

Often the parties choose to divide the issues into economic and noneconomic issues. Separating issues into these categories may facilitate problem resolution and integrative bargaining. During these intermediate stages, any obstacles to a settlement may begin to surface.

The Final Stages of Negotiations

The final stages of bargaining begin as the **strike deadline** approaches. At this point, the process both heats up and speeds up. Off-the-record discussions of the issues may take place between two individuals or small groups of representatives from both sides, perhaps with a mediator present. These discussions serve several purposes: they help representatives save face with their constituents, they allow each party to more fully clarify their positions, and they enable both sides to explore possible compromises. At this point the negotiators have a better idea of their opponent's bottom-line positions and they may have private discussions over what it will take to reach a settlement. In these final stages before a strike deadline, each party is seeking to convince the other of the credibility of its threat to strike or lockout. Each side also is trying to get the other side to change its bottom line to prevent a strike, and each party is trying to accurately predict the other side's real positions on the issues to avoid backing into an unnecessary strike. At this stage, therefore, usually only a small number of decision makers is involved in the process.

Even if the key bargainers may agree on how a bargaining settlement could be reached, agreement is not yet assured. If the negotiators are unable to sell a settlement to their constituents, the agreement might still not be reached without reaching an impasse (see Chapter 9).

INTEREST-BASED BARGAINING: AN ALTERNATIVE TO TRADITIONAL NEGOTIATIONS

The traditional approach to negotiations has often been criticized for its limited potential for solving problems. Critics view the dominance of distributive issues and tactics, the tendency of both sides to overstate demands, and the tactical use and withholding of information as ways that traditional bargaining reinforces rather than overcomes adversarial tendencies in labor-management relations. As an alternative, some researchers and a growing number of practitioners have suggested using **interest-based** or **mutual-gains** bargaining techniques.

Interest-based bargaining is essentially an effort to use integrative bargaining principles from the Walton and McKersie model in the negotiations process. This approach to bargaining was first popularized by Fisher and Ury's best-selling book on negotiations, *Getting to Yes*. In interest-based bargaining, parties are encouraged and trained to (1) focus on their underlying interests; (2) generate options for satisfying these interests; (3) work together to gather data and share the information they need to evaluate options; (4) evaluate the options against criteria that reflect their interests; and (5) choose options that maximize their mutual interests.

Consider how using these principles alters the typical negotiations process described above. Instead of each party beginning bargaining with a laundry list of inflated demands, each party separately produces a list of problems that need to be addressed in negotiations to address their core interests. In some cases, the parties may even frame the problems jointly by building on the reports of **labor-management committees** set up to collect data and study vexing problems such as safety and health hazards, the costs of quality of health insurance, and so forth. A subcommittee might then be formed to collect the additional information needed to generate options that the full negotiating teams can consider. Ideally, options are generated through brainstorming (a free-flowing discussion in which members of a group are encouraged to generate ideas without committing themselves to a fixed position and without criticizing the ideas others suggest). Analysis of the root causes of problems and extensive data sharing are also encouraged at this pre-bargaining or early stage of the negotiations process. As bargaining proceeds to a decision-making phase, each bargaining team develops standards or criteria to evaluate options. The goal then is to choose options that do the best job of serving the interests of both parties.

In theory, an interest-based process does not differentiate between distributive and integrative issues. Instead, by focusing on basic interests and problems that lie in the way of achieving those interests, the parties attempt to use problem-solving or integrative strategies to address the full range of concerns each party brings to the table. However, experience has shown that some issues are harder to resolve through pure interest-based techniques, since they do involve clear trade-offs. When such situations arise in interest-based negotiations, the parties may resort to more traditional tactics and thus mix the two approaches to negotiations.

Interest-based bargaining requires a high level of trust among the negotiators and between the negotiators and their principals and constituents. Thus, it is

difficult to make this process work when there are significant intraorganizational conflicts in one party or the other. How management bargainers in one company prepared for an interest-based approach to bargaining is described in Box 8.3.

When should the parties consider using interest-based techniques and how should negotiators go about trying them out? Most experts agree that both negotiating teams need to be trained in these techniques well in advance of the start of negotiations. Some further recommend that in order to overcome constituents' suspicion, rank-and-file union members and managers who are not on the negotiating team should participate in the training, in gathering data, and in the deliberations of subcommittees. Often a specially trained **facilitator** (as opposed to a traditional mediator) is also brought in to coach and assist the parties in interest-based negotiations.

While the record of interest-based bargaining to date is still modest and some cases of failure have been reported, it is clear that the growing complexity of the problems labor and management face are pressuring them to find better ways to produce "win-win," or mutual gains, solutions.

STRIKES

In recent years, the number of strikes have declined; they occur in only about 5 percent of all labor-management negotiations. But in many negotiations, the *threat of a strike* continues to play a key role in motivating the parties to move toward an agreement. We explore the role of the strike and the strike threat in this section.

How the Strike Threat Influences Negotiated Settlements

In negotiations, the bargaining parties are unlikely to settle on terms that differ substantially from whatever terms they think would settle a strike if one were to occur. Consequently, strikes are an important determinant of both parties' bargaining power.

During negotiations, both labor and management negotiators formulate expectations about what might happen if the negotiations were to reach an impasse and a strike were to follow. At the same time, both sides have a strong incentive to avoid a strike because both sides lose income during a strike.

During a strike, workers give up wages. They try to make up for those lost earnings by possibly taking a short-time job. Workers also turn to union strike benefits, the earnings of a spouse, or savings to support themselves and their families during a strike.

Firms lose profits during a strike. They try to decrease the amount of profits lost through tactics such as bringing in replacement workers for the strikers, making sales out of any available inventories, or shifting production to an alternative site. The firm relies on assets or the earnings from other lines of business to meet any financial obligations (such as equipment expenses) during a strike. In service businesses such as airlines, where business lost during a strike cannot be made up through selling inventory or post-strike deliveries, strikes are especially costly.

This is one reason why more extensive efforts are made to avoid strikes in these settings, as we will see when we discuss dispute resolution procedures and proposals for reform in the airline industry in the next chapter.

The Hicks Model of Strikes

The material below examines the role the strike threat plays in the negotiations process and identifies the factors that lead to strikes. John R. Hicks developed a very insightful model for analyzing the role strike leverage plays in shaping negotiated outcomes.[9] Figure 8.1 diagrams the **Hicks model of strikes.** To simplify the discussion, assume that the parties are negotiating only over wages (or assume that all items in dispute can be reduced to monetary terms and represented by a simple wage).

In the Hicks model, bargainers form an expectation of what they would eventually agree to if there was a strike. In case A in Figure 8.1, both parties expect that if there is a strike it will be ended with a wage settlement of *w(es).* If a strike occurs, however, both labor and management will absorb income losses during the strike. Workers will forgo earnings during the strike and management will lose profits because production has stopped.

Because they are aware of these potential income losses, the parties should be able to find a negotiated wage settlement during the negotiations that they prefer over the wage settlement they would end up with at the end of a strike, *w(es).*

The income that management would lose during a strike would amount to an hourly wage cost to management of *w(m).* Because management expects a strike to end with a wage of *w(es),* they should be willing during negotiations to agree to a wage as high as the expected strike outcome plus the cost to management of the potential strike, or *w(es)* + *w(m).*

Labor in this case also expects a strike to end with a wage of *w(es).* The income workers would lose during a strike would amount to an hourly wage cost to labor of *w(u).* Therefore, during negotiations, the workers should be willing to

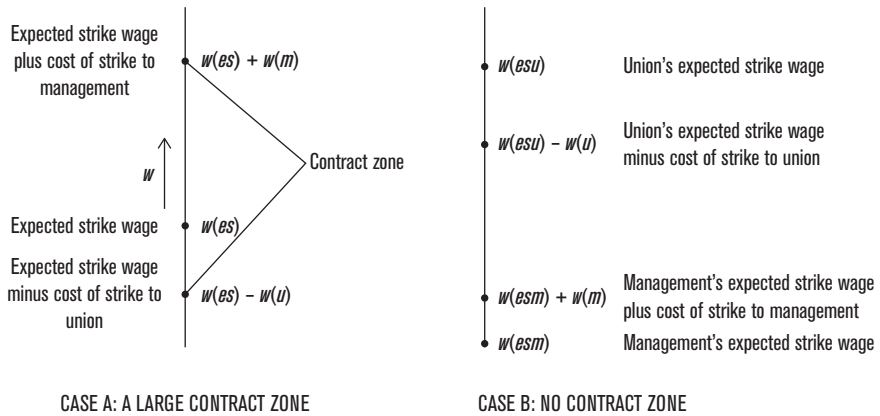

Figure 8.1. The Hicks model of strikes

accept a wage as low as the expected strike outcome minus the hourly cost of the strike to labor, or *w(es) − w(u)*.

The difference between what management is willing to accept during negotiations and what labor is willing to accept during negotiations creates a **contract zone** of potential settlements. Both sides should prefer to reach settlements in the contract zone during negotiations rather than going on strike and ending up with the strike wage outcome and income losses during the strike.

It is, of course, possible that there is no contract zone. Case B in Figure 8.1 diagrams such a situation. In this case, management expects a very low wage if a strike were to occur *w(esm),* while the union expects a very high wage if a strike were to occur *w(esu).* Even in the face of the expected strike costs, *w(m)* and *w(u),* there is no contract zone because *w(esuyes) − w(u)* is greater than *w(esm) + w(m)*.

The important point that Hicks noted is that in this framework, there is *no* contract zone *only* if the parties have very different expectations of the strike outcome. The fact is that there is some true strike outcome. When the expectations of both labor and management diverge from the strike outcome, one or both of the parties makes **miscalculations** in their prediction of the strike outcome. When there is no contract zone, one or both of the parties must be excessively optimistic about what it thinks will settle a strike.

Hicks concluded that strikes occur only when one or both sides have miscalculated. The key point is that since a strike imposes costs on both sides, it should be less attractive than a negotiated settlement.

Strikes can occur even when there is a contract zone, but in the Hicks framework this also requires miscalculation. Hicks argued that there may be situations where the settlement the parties anticipate is not located in the zone, even though a contract zone exists. This occurs because the parties are unable to find the negotiated settlements they both would prefer over the strike outcome, because of bluffing or intransigence.

In the Hicks model, negotiators have great latitude to further the interests of their side. It is in management's interest to reach a settlement at the lowest wage in the contract zone, and it is in labor's interest to reach the highest wage settlement in the contract zone.

In addition, during negotiations it is in each side's interest to attempt to change the other side's expectation of the strike outcome. Management would like to convince labor that the potential strike outcome is a very low wage, and labor has an interest in convincing management that the potential strike outcome is a very high wage. The risk the parties face is that in their efforts to change the other side's expectation of the potential strike outcome, they might engage in tactics (such as bluffing or threats) that result in miscalculations, a strike, and the loss of income.

Some of the Sources of Miscalculation

Negotiators may have expectations of the potential strike outcome that are different from those of their constituents. Orley Ashenfelter and George Johnson posited

that strikes occur because union members have unrealistic expectations.[10] They argued that both management and union leaders have accurate expectations of the strike outcome, but union members are overly optimistic about what can be achieved in a strike. Under these conditions, strikes are a device to lower union members' expectations. Although it is difficult to justify why union members alone have unrealistic expectations, the Ashenfelter and Johnson framework highlights that strikes may occur when union members and leaders have diverging expectations of the strike outcome.

Hicks's model is a very useful starting point for analyzing the negotiations process. Building on his approach requires an understanding of the factors that influence the willingness and ability of either side to engage in a strike. These factors determine the wage the parties expect they will end up with at the end of a strike. The Hicks framework also suggests the need to uncover the factors that lead either side to be overly optimistic about a potential strike outcome or to miscalculate in other ways during negotiations.

The Behavioral Model of Strikes

Behavioral factors such as the degree to which labor is integrated into the surrounding community may be one source of miscalculation that leads to strikes. In a classic study, Clark Kerr and Abraham Siegel analyzed strike data across countries and industries and found that strike rates were consistently higher in certain industries such as mining and longshoring.[11] The authors proposed that behavioral factors peculiar to certain industries were at least partly responsible for the higher strike rates. This is known as the **behavioral model of strikes.** Workers in longshoring and mining often have their own subculture, they are distant from major population centers, and their work involves harsh physical labor. Kerr and Siegel argued that workers in these industries are comparatively poorly integrated into society and express their frustrations and isolation by instigating relatively frequent strikes.

In Hicks's terminology, Kerr and Siegel identified a set of factors—social and geographic isolation—that contribute to the likelihood of miscalculation in bargaining. Kerr and Siegel also emphasized that strike occurrence may have very little to do with the issues on the bargaining table.

Militancy as a Cause of Strikes

Strikes also may occur as a result of the militancy of a work force or a union. Marxist theorists have noted that there is a strong statistical association between strike frequency rates and the business cycle. Over time (and across countries), strikes tend to occur more frequently during business upturns. This association is difficult to explain with the Hicks model, which predicts that wage settlements should be higher during business upturns, but not strike frequency.[12]

Marxist theorists argue that the fact that strikes occur more frequently when the economy is strong demonstrates that conflict is a product of the bargaining power of labor. This **bargaining power model of strikes** focuses on the fact that strikes are typically initiated by the union and the work force. Thus, during

periods when the union's bargaining power is relatively weak, the union is less likely to press its demands and is less likely to resort to a strike when seeking more favorable contract terms.

The bargaining power thesis also recognizes that strikes are frequently initiated by workers on the shop floor who are upset by management's actions or by official union policy (these sorts of strikes often would be categorized as unauthorized, or wildcat, strikes). Workers are less likely to engage in this sort of shop-floor action when labor markets are slack and workers worry about the possibility of layoff.

Negotiations involve many issues, what will actually occur in a strike is highly uncertain, and labor negotiations typically occur repeatedly between the same parties. These factors make it extremely difficult to predict the settlement point or the causes of an impasse in any given negotiations.

STRIKE ACTIVITY

Strikes occur infrequently. The total work time lost due to strikes has averaged well below one-half of 1 percent per year. In 2015, there were twelve major work stoppages each involving 1,000 or more workers. Historically, strike rates have been higher than this in the United States. For instance, in 1971 there were 298 major work stoppages that involved a total of 2.5 million workers.[13] The low frequency of strikes is consistent with Hick's prediction that both parties usually have strong incentives to avoid strikes. It also appears that the ability of unions to engage in a strike has declined in recent years as a result of increased international and domestic competition and decreasing union coverage in and across industries, lending support to the bargaining power thesis noted above.

Whereas strikes in other periods seemed to provide a positive return to union members, strikes in recent years have frequently appeared to be defensive weapons that unions fighting for their continued existence use only as a last resort. The strikes that did take place were often more hostile, violent, and emotional than the earlier strikes. Since the strikes were so bitter, they entailed greater costs to both sides, and, consequently, both labor and management had incentives to avoid their occurrence.

Many strikes in recent years occurred when labor and management could not agree on how to respond to the increasing cost of health care benefits. Many firms were seeking concessions in contract negotiations that would either require increased employee payments to cover health care cost increases or reductions in health care benefits. Box 8.4 describes how health care benefit modifications have become a central issue at GE for both union and nonunion employees.

Another issue that has become extremely contentious in recent collective bargaining is the outsourcing of work. A recent strike at Verizon Communications (see Box 8.5) received a lot of attention because the unions at Verizon appear to have made gains in limiting management's ability to outsource work.

Even though the strike weapon has had reduced potency for many unions in recent years, some unions (and employees) retained sizable strike leverage. The

BOX 8.4

Health Care Benefits Are a Central Issue in Labor Relations at General Electric

Health care benefits for current and retired workers have been a central issue in recent labor relations at General Electric (GE). Events at GE are representative of the central role that issues related to health care have played in some labor-management relationships.

At the start of recent negotiations, GE requested significant reductions in the health benefits its current unionized workers would receive. For a while, it looked as though this demand would lead to a strike. These negotiations involved unions that represent some of GE's U.S. employees (the United Electrical, Radio and Machine Workers of America [UE], the International Union of Electronic, Electrical, Salaried, Machine, and Furniture Workers–Communications Workers of America [IUE-CWA], the United Auto Workers [UAW], the International Association of Machinists and Aerospace Workers [IAM], and the International Brotherhood of Electrical Workers [IBEW]). However, the parties compromised and on June 30, 2015, a four-year contract was ratified with the UE and IUE-CWA, the unions that represent 12,780 GE employees. The new contract includes modest increases in employee premiums for health insurance, but over its four-year period, it provides about $15,000 more in compensation. Similar terms were later accepted in negotiations involving the other unions that represented other GE workers.

The new contracts did not, however, settle all disputes at GE concerning health care benefits. A federal district court decision issued on June 5, 2015, ruled that disgruntled GE non-union retirees (former executives and other white-collar employees) can proceed with claims that GE misled them about their post-retirement health benefits, which are slated to end in 2015. The retirees allege that GE's summary of its health plan in 2012 misleadingly stated that the company "expects and intends" that retiree benefits would continue indefinitely.

The leadership of the UE and others initially praised the four-year agreements mentioned above for protecting post-65 health care benefits for unionized GE retirees. But in July 2015, GE announced that it would unilaterally terminate health care benefits to former production workers and their spouses older than 65 who were eligible for Medicare. In response, a coalition of nine unions filed a class-action suit seeking to reverse the cancellation of these health care benefits. The unions claimed that these benefits were vested and that GE's termination of the benefits violated the collective bargaining agreements GE had with its unions.

Sources: Rhonda Smith, "UE, IUE-CWA Ratify Four-Year Contracts with General Electric for 12,780," *Daily Labor Report*, July 1, 2015, A-10; "General Electric Can't Dodge Allegations of Improperly Axing Retiree Health Benefits," *Daily Labor Report*, June 8, 2015, A-3; and Carmen Castro-Pagan, "GE Hit with Class Action for Lifetime Health Benefits," *Daily Labor Report*, November 13, 2015, A-10.

BOX 8.5

Long Strike Ends at Verizon with Claims of Union Gains

According to the U.S. Bureau of Labor Statistics, 47,000 workers went out on strike in 2015 in the United States. This puts into perspective the magnitude of the 2016 strike at Verizon Communications, in which 40,000 workers (mostly customer service workers and technicians) participated in a strike that lasted six-and-a-half weeks. This strike was also noteworthy because the unions at Verizon made several important gains. This contrasts with the experiences of most striking workers since the mid-1990s.

The strike was organized by the two major unions that represent Verizon employees, the Communications Workers of America and the International Brotherhood of Electrical Workers. The strike followed months of contentious negotiations. Verizon's current business model creates inherent difficulties for its unionized workers. The company still maintains a large landline network, which is installed and serviced by unionized employees, while continually expanding its wireless services, which are serviced by nonunionized employees. Much of the company's growth and current profits derive from its wireless business. The union members in the shrinking landline segment are threatened by Verizon's perpetual efforts to decrease labor costs in the landline segment and focus its investments on the more profitable wireless services.

This tension framed the major disputes in contract negotiations. Although there were some disagreements about pension caps and health care coverage, the key source of the impasse was the company's insistence on decreasing the proportion of customer service calls that would be handled by unionized employees. (Verizon outsources a significant proportion of its customer service calls.) Obviously, this presented a major threat to union workers' job security.

Despite Verizon's initial claim that the strike would not affect its revenue significantly, their chief financial officer later admitted that the strike had led to a decreased capacity to provide installations, which in turn impeded company growth and lowered profits. The size of the strike, both in terms of numbers and national economic impact, prompted both the U.S. secretary of labor and the Federal Mediation and Conciliation Service to become involved.

Many observers felt that the settlement provided clear wins for the unions. The settlement included a higher wage increase (10 percent over four years) than the 6.5 percent increase Verizon had initially offered; the company withdrew its demand that it be allowed to cap pensions; and it withdrew a proposal to allow it to relocate employees anywhere on the grid for a period of two years. In return, the unions accepted the restructuring of some of the provisions in their health care plan. A compromise that benefited both sides was reached regarding the major issue, the redirecting of customer

service calls. The company could redirect a greater proportion of the calls away from the initial region, but only to other unionized employees elsewhere on the grid, instead of to nonunionized workers in or out of the country. The union's position was that as long as the work was being done by its members somewhere, they had no complaint, while the company claimed that this change allowed for greater efficiency.

Another key union gain in the settlement was contract terms for seventy retail wireless workers in a handful of stores who more than a year earlier had voted for union representation. These are the first Verizon customer service workers to gain the benefit of a union contract, something Verizon wireless managers had been aggressively trying to prevent for years (see Chapter 6). It remains to be seen if this will lead to greater union success at organizing workers in other parts of Verizon's wireless business and, more generally, whether the Verizon strike settlement will inspire other workers to be more aggressive in negotiations and during strikes.

Sources: Noam Scheiber, "Verizon Strike to End as Both Sides Claim Victories on Key Points," *New York Times*, May 30 2016, http://www.nytimes.com/2016/05/31/business/verizon-reaches-tentative-deal-with-unions-to-end-strike.html; United States Department of Labor, "Work Stoppages Summary," Bureau of Labor Statistics, February 10, 2016, https://www.bls.gov/news.release/wkstp.nr0.htm.

players in the major sports in the United States (football, baseball, basketball, and hockey) are represented by unions, and, as Box 8.6 describes, there have been frequent strikes over the last twenty-five years when negotiators for those unions and the respective leagues have reached impasse. It is not exactly clear why strikes are such a frequent occurrence in sports collective bargaining. Perhaps it is because players have high strike leverage that derives from the fact that there are no substitutes for superstar players. If this is the explanation for the high strike rate, then it provides an illustration of the militancy theory of strikes discussed above. Or perhaps strikes are so common in sports because both the team owners and the players are so inexperienced in labor relations and there is so much intraorganizational disagreement (between stars and utility players on the player side and between rich and financially strapped teams on the owner side) that miscalculation if frequent during bargaining. If the latter explains the high strike rate, then it supports the miscalculation theory of strikes discussed above.

Collective bargaining in baseball is noteworthy because it is the union that has pushed for increased reliance on the market to set players' salaries, while team owners want greater revenue sharing between teams (to promote competitive balance) and limited player movement (to limit players' salaries). For example, baseball players won free agency in 1975 through a decision of a grievance arbitrator, which helped produce a sharp rise in players' salaries. See Box 9.3 for

BOX 8.6
Frequent Strikes in Professional Sports

There have been frequent strikes when representatives of U.S. players and owners have reached an impasse in their collective bargaining over the last twenty-five years. For example, a National Basketball Association (NBA) players' strike in the fall of 1998 led to the cancellation of much of their season as players and owners squared off in a prolonged dispute that centered on the terms of the NBA's free agency system and how the two sides would divide the increasing revenue of the NBA.

Strikes can be initiated by management in sports, just as in other sectors. This sort of impasse is referred to as a lockout. A lockout occurred in the National Hockey League (NHL) that led to the cancellation of the 2004–2005 NHL season. The NHL players and team owners disagreed about how to set players' salaries. NHL hockey finally resumed in the 2005–2006 season after a salary cap and other new procedures were added to the NHL's collective bargaining agreement.

Collective bargaining in sports hasn't always led to a strike. For example, in August 2002, baseball players and team owners settled contract negotiations without resorting to a strike. Apparently, both players and owners feared that a strike at that point would particularly upset fans and potentially lead to long-term damage to the game (and their own incomes). Fans had a strong negative reaction to the 1994 baseball strike, which had led to the cancellation of that year's World Series, and in 2002 both labor and management feared even greater damaging effects if another strike occurred.

Sources: Robert C. Berry, William B. Gould, and Paul D. Staudohar, *Labor Relations in Professional Sports* (Dover, Mass.: Auburn House, 1986); Alex Remington, "Lockouts, Strikes and Labor Politics in Professional Sports," *Footnote*[1], June 5, 2013, http://footnote1.com/lockouts-strikes-and-labor-politics-in-pro-sports/.

a description of the salary arbitration procedure now used to set baseball players' salaries.

Professional sports is an example of a sector where, perhaps surprisingly, collective bargaining is playing an increasingly visible role because of the publicity surrounding player conduct. In recent years, there has been much controversy surrounding the penalties assessed on players, including some long suspensions, in response to accusations that the players were using banned performance-enhancing drugs or were perpetrators of domestic violence. Box 8.7 describes the central role of the grievance procedure that is included in the various sports league's collective bargaining agreements in recent cases where league commissioners have punished various players.

BOX 8.7

The Role of Collective Bargaining in Settling Disputes about Drug Use and Personal Conduct in Professional Sports

In some ways, the collective bargaining agreements that regulate all four major sports in the United States (football, baseball, basketball, and hockey) are similar to other labor agreements: they cover the same issues of wages, benefits, and work rules. However, because of the celebrity status of athletes and other factors, sports bargaining agreements feature personal conduct and drug abuse policies that are paired with interesting enforcement mechanisms.

To understand how these policies are implemented, it is important to understand the structure of professional sports leagues in the United States. Each individual team, which employs and pays its players, is part of a respective league and is subject to league rules and discipline. Typically, owners or team representatives vote on or in other ways have influence on the policies the league adopts. However, personal conduct matters and the specific disciplinary actions taken against players are determined by the commissioner of each league, who serves at the pleasure of the owners.

Each of the four major sports leagues in the United States have detailed drug policies. These cover both recreational drugs and performance-enhancing drugs. For example, as of 2015, Major League Baseball had recognized and banned seventy-four performance-enhancing substances. The league and players' associations often have similar views on the regulation of performance-enhancing drugs and about the regulation of other drugs. They also agree about penalties for players who perpetrate domestic violence. Thus, there is a lot of common ground in the positions of players and the leagues. In the NFL in 2015, for example, forty-nine players were suspended for violating the drug policy. The suspensions ranged from a single game to the entire season based on the number of times players had failed drug tests in the past.

The leagues' personal conduct policies are far less structured. The leagues have a long list of many types of personal conduct violations. Players who violate these rules create a lot more news and negative publicity than other employees would. Several major events in the last few years have generated national news and outrage. This was caused both by the events themselves and the responses of the leagues.

In most cases, there are no specific guidelines regarding the appropriate penalties for specific events, so it typically the commissioner's discretion determines the penalty. In 2015, eleven NFL players were suspended because they had violated the league's personal conduct policy. The suspensions ranged from one game to six, which is almost half a season. Probably the most publicized case was a domestic violence complaint against former Texas Ravens running back Ray Rice. Rice allegedly knocked his wife unconscious in a casino elevator and was eventually brought before the commissioner. He was suspended for the first two games of the season.

Then a video of the incident surfaced and caused national outrage over what now seemed like a lax penalty. The league responded by suspending Rice indefinitely, but Rice argued that he had been punished twice for the same incident, which isn't allowed under the NFL's agreement. Eventually, the Rice suspension was amended to a year, but no team has signed the former all-pro since the incident.

Players often appeal both drug and personal conduction violations through the grievance procedure in their collective bargaining agreements. The players can use the legal system to appeal disciplinary actions. Perhaps the most controversial court involvement in a player suspension is the recent case involving New England Patriot quarterback Tom Brady. This case, which concerns accusations that Brady knew about and/or obstructed an investigation into a plot to deflate footballs used in the 2015 American Football Conference championship game, illustrates the critical role the specific language in a collective bargaining agreement can play. In this case, the language in the parties' collective bargaining agreement proved decisive, and a three-judge panel of the United States Court of Appeals upheld NFL Commissioner Goodell's four-game suspension of Brady in a decision issued on April 25, 2015. The Second Circuit Court of Appeals affirmed that Goodell had broad discretion to suspend players according to the collective bargaining agreement with the players' union.

Interestingly, in their decision, the judges admitted that they did not consider the underlying facts of the case, including the science of football deflation, but instead looked solely at whether Goodell, as arbitrator, had acted in the spirit of the collective bargaining agreement. The court concluded, "We hold that the commissioner properly exercised this broad discretion under the collective bargaining agreement and that his procedural rulings were properly grounded in that agreement and did not deprive Brady of fundamental fairness."

The judges went on to say that despite the protestations of Brady and the NFL Players Association, Goodell was merely acting on the powers the league and the union had agreed to in their labor contracts, the latest of which was signed in 2011. The judges acknowledged that the management-union pact in which the person who penalizes players (the league commissioner) also listens to appeals of those penalties might be unconventional, but they would not get in the way of a long-standing and transparent contract. The court stated, "In their collective bargaining agreement, the players and the league mutually decided many years ago that the commissioner should investigate possible rule violations, should impose appropriate sanctions, and may preside at arbitrations challenging his discipline."

Sources: Ken Belson, "N.F.L. Wins Appeal, and Tom Brady Has Little Recourse," *New York Times*, April 25, 2016, http://www.nytimes.com/2016/04/26/sports/tom-brady-deflategate-new-england-patriots-suspension-reinstated.html?emc=eta1.

The Role of Replacements for Striking Workers

One of the most controversial strike issues is whether a firm will hire temporary or permanent replacements when workers go on strike. Under U.S. labor law, management has the right to hire temporary replacements and can hire permanent replacements if it notifies the union and the newly hired employees that it is doing so. The threat of hiring permanent replacements, therefore, is often taken as a signal of management's intent to bargain hard and even to eliminate the union if it goes on strike.

Alternative Collective Strike-Like Actions

As the traditional strike leverage of unions has declined as management has threatened to use permanent replacements, outsourcing, or other tactics, unions in recent years have more frequently used other forms of collective action to increase their bargaining leverage. The sickout by Detroit public school teachers described in Box 8.8 is one example of this sort of strike-like action.

THE ROLE OF MANAGEMENT AND UNION STRATEGIES ON NEGOTIATIONS

Management strategies have a major effect on the negotiations process and on the likelihood of a strike. For one thing, management's investment and product decisions affect its bargaining power and negotiations strategies. For example, whether management chooses a low-cost, high-volume product strategy instead of a high-quality, high-innovation strategy shapes the extent to which the employer is concerned with lowering wage costs. In addition, a company's human resource strategy affects negotiations, particularly in terms of how that strategy affects the attitudes of employees.

Union strategies also affect the course of collective bargaining. Whether and how a union seeks support from community groups or other unions in an effort to pressure a particular employer often become critical issues in labor negotiations.

The recent evolution of collective bargaining in three cases—auto company-UAW, Boeing-IAM, and U.S. postal service (USPS) bargaining with the three unions that represent its employees—illustrate the dynamics of bargaining.

Negotiations between Auto Companies and the UAW

In the fall of 2015, the UAW reached contract settlements with each of the Big Three auto companies (GM, Ford, and Fiat-owned Chrysler) where the union represents all blue-collar workers. The three contracts gave contract gains to the UAW that reflected both economic recovery in the auto industry and the effects of that recovery on the union's bargaining power. The 2015 contracts also reflect the strategic decision of the UAW to use their renewed strength to reverse some of the effects of concessions the union had made during the 2008 financial crisis. A key feature of the 2015–2019 collective bargaining agreements is that they provided substantial wage increases to lower-tier ("in-progression") workers and

BOX 8.8

Mass Sickout by Teachers Closes Detroit Public Schools

Most of Detroit's public schools (64 out of 100 schools in the city) closed on January 11, 2015, in the face of a "sickout" by teachers who protested what they called unsafe, crumbling, vermin-infested, and inadequately staffed buildings and the failure of state lawmakers to agree on a plan to rescue a system teetering on the edge of insolvency. Because of the school closings, 31,000 of the 46,000 students in the district missed a day of instruction, which cost the district more than $1 million in state funding based on attendance.

The Detroit school district is beleaguered. It consistently has had the lowest test scores among large school districts in the United States. The district has lost more than two-thirds of its enrollment in five years, which has led to the closing of many of its schools. The district has been running large deficits, including $1.3 billion in unfunded retiree benefits and hundreds of millions of dollars in other obligations.

Before the strike, teachers had been staging periodic smaller-scale sickouts for a month. The sickouts, which the Detroit Federation of Teachers did not endorse, were organized by Steve Conn, who was ousted in August 2015 as president of the union but still has an ardent following in the union. Mr. Conn had been an activist in the union at odds with other union leaders—and the district administration—until February 2015, when teachers elected him president. Seven months later, the union's executive board removed him over charges of misconduct.

Events in the Detroit public schools illustrate the important role that a collective pressure tactic can play. The political infighting in the teachers' union also illustrates intra-organizational differences.

Source: Richard Perez-Pena, "'Sickout' by Detroit Teachers Closes Most Public Schools," *New York Times*, January 11, 2016, https://www.nytimes.com/2016/01/12/us/sickout-by-detroit-teachers-closes-most-public-schools.html.

wage increases to upper-tier ("traditional") autoworkers. To understand the strategic choices the UAW made and the how recent increases in the union's bargaining power contributed to these recent contract gains, it is helpful to review the prior difficulties of labor and management in the auto industry.

The bargaining power of the UAW declined sharply beginning in the 1980s due in part to the growing proportion of U.S. auto production that was taking place in nonunion "transplants" (assembly plants in the United States owned by foreign-based auto companies). Transplant workers produced over 40 percent of cars and trucks assembled in the United States. Although the UAW has launched various organizing drives in unorganized transplants in recent years, none of these

drives has been successful. The UAW's efforts to organize the Volkswagen plant in Tennessee have been particularly noteworthy. The UAW launched extensive efforts to organize that plant with the support of Volkswagen management, which declared that it was neutral toward union organizing. To the union's disappointment, a majority of workers did not vote in favor of union representation, although the union continues to try to organize the plant.

The UAW's bargaining power had also been negatively affected by the fact that imported cars and trucks had captured a growing share of vehicle sales. Imports accounted for a growing share of the U.S. market, rising from a postwar low of 5 percent in 1955. The proportion of imports surged in the 1980s, then declined in the 1990s as Japanese, Korean, and German companies increased their North American production capacity. Then the import share rose again, and it is now more than 50 percent.

As import and transplant vehicle sales increased, the total bargaining power of labor and management at the Big Three auto companies decreased. In addition, the relative bargaining power of the UAW was weakened by the ease by which the companies could move production offshore and the erosion of strike leverage due to excessive production capacity during the industry's periodic sharp cyclical downturns.

The fringe benefit package in the Big Three–UAW collective bargaining contracts came under particular pressure as the popular press and corporate managers criticized the "legacy costs" associated with pensions and retiree health. These costs were high in part due to the large number of retirees relative to the number of active workers, given the decreases that had occurred in the size of the Big Three work forces. The legacy costs in the U.S. auto industry were identified as the key source of the competitive cost disadvantage the Big Three faced vis-à-vis the transplant companies. The latter were advantaged by more limited benefit plans, younger current work forces, and very few retirees.

Economic pressures on labor and management at the Big Three became especially severe during the 2008 financial crisis as sales and then production of autos plummeted. By June 2009, two of the Big Three American car manufacturers (GM and Chrysler) had filed for bankruptcy and had emerged as new companies with significant government ownership. Shortly thereafter, Fiat became a co-owner of Chrysler. Ford managed to avoid similar bankruptcy and government ownership only because it had arranged large private loans before the financial collapse. Under pressure from the U.S. government to bring labor costs to the lower levels found in the transplants and fearing the potential liquidation of GM and Chrysler, the UAW agreed to unprecedented concessions. These concessions included a lower wage for new hires ($14 per hour compared to the $28 per hour received by previously hired UAW workers).

When labor and management entered company-level collective bargaining in the fall of 2015, the economic environment had rebounded and auto sales and company profits were up. The fall 2015 contracts reflected the corresponding increases in labor and management's total power and auto management's desire to avoid potentially disruptive and costly strikes. The 2015 contracts stipulated

that over an eight-year period, the hourly wage of lower-tier workers would increase from $19 to $29, which was close to the $32 hourly wage "traditional" workers earned. And although the fringe benefits package for lower-tier workers was worth significantly less than the benefits traditional workers received (whose benefit package costs the companies $25 per hour and includes "30 and out" defined benefit pensions), the 2015 contracts also improved the health care and other benefits lower-tier workers received. The lower-tier work force now amounts to 45 percent, 20 percent and 28 percent, respectively, of the Chrysler, GM and Ford work forces. Other provisions of the 2015 contracts that helped win the support of upper-tier workers were base wage increase of 3 percent in both the first and third years of the new contracts and 4 percent lump sum bonuses in the second and fourth years of the contracts. In addition, sizeable "signing bonuses" were gained ($8,000 per worker at GM) and there were also improvements in various fringe benefits for traditional workers.

Although UAW members and leaders were very pleased with the gains won in their 2015 contracts, they continued to be disturbed by the amount of work moving out of the United States to countries that had lower labor costs. (The fact that the 2015 contract gains gave the Big Three increased incentives for such movement is an illustration of the wage-employment trade-off.) See Box 8.9 for a discussion of the UAW's complaints about the movement of work abroad.

Labor Relations Involving the Boeing Corporation and the IAM

Labor relations at The Boeing Company are interesting because Boeing has been so economically successful and because for many years the company's white- and blue-collar work forces used collective bargaining to share in Boeing's success. At the same time, there has been much recent acrimony in Boeing's labor-management relationship and strategic maneuvers by Boeing management that might eventually severely reduce the bargaining power of the unions that represent Boeing's employees.

Boeing manufactures commercial aircraft including wide-body planes such as the Dreamliner, the 747, and the new 777. Boeing has 45 percent of the world's commercial jet market and is a sizeable defense contractor. Its only significant competitor in the commercial wide-body plane market is Airbus, a European-based consortium. The production of wide-body planes is highly profitable and contributes much to Boeing's stature as the largest exporting company in the United States by dollar volume. Much of Boeing's wide-body plane production is concentrated in the Seattle metropolitan area, where machinists represented by the IAW manufacture key parts and assemble planes. Unusually for a U.S. private sector employer, many of Boeing's professional employees—engineers and middle-level managers—are represented by a union, the Society of Professional Engineering Employees in Aerospace (SPEEA).

Over the years, both blue- and white-collar employees at Boeing have used collective bargaining to gain favorable wages and a variety of fringe benefits. These gains illustrate the unions' relative power (due in large part to its strike

BOX 8.9

UAW President Complains about Work Leaving the United States

Three months after the United Auto Workers ratified new four-year agreements with Detroit-area automakers in early 2016, UAW president Dennis Williams accused the auto companies of shifting significant car production to low-wage countries such as Mexico and China. The new agreements, discussed above in the text, provided substantial wage increases, particularly to newly hired auto workers in the United States, but also allowed the auto companies to move production.

Williams believes that the companies are making ample profits from auto production in the United States. However, he says, "The fact of the matter is, companies continue to run to low-wage countries." In 2016, Fiat Chrysler announced that it will stop making its Dodge Dart compact and Chrysler 200 in the United States and Ford said that it will stop building its Focus compact in Michigan and move that work to Mexico. (Mexican autoworkers earned $8.24 an hour in 2013, compared with the $37.62 U.S. autoworkers earned that same year.) Williams also complained about GM's announcement that it intends to import the Buick Envision SUV from China. (Williams said that union members have nicknamed that vehicle the "Invasion.") He also argued that the carmakers should be loyal American taxpayers because the U.S. government had bailed out GM and Chrysler in 2009 (see text above).

However, the auto companies have continued to make sizeable investments outside the United States. In April 2016, Ford announced that it would invest $1.6 billion in a new small-car factory in Mexico, which drew additional criticism from the president of the UAW. Ford noted in response that it has been manufacturing cars in Mexico since 1925 and that from 2011 to 2015, it had invested more than $10 billion in the United States and added 25,000 jobs in the United States.

Source: David Welch, "UAW President Bemoans Work Moving to Mexico," *Daily Labor Report*, February 5, 2016, A-3; Keith Naughton, "Ford Plan for Mexico Plant Draws Trump-Like Barb from UAW," *Daily Labor Report*, April 5, 2016, A-7.

leverage) and the high total power it derives from Boeing's strong market positon and solid profits. Frequent strikes have occurred over the past twenty-five years as part of contract negotiations at Boeing, including a 58-day strike in 2008.

In the winter of 2011, after Boeing and the IAM had reached an impasse in their negotiation of a new multiyear contract covering Seattle-area work, IAM members rejected a proposed settlement. After the national offices of the IAM intervened and ordered a second vote, Boeing workers voted to accept a new

four-year contract. Although the company had all along agreed to provide sizeable wage increases and lump-sum signing bonuses, many Boeing workers apparently were upset that the company was demanding that the company's defined benefit pension plan be replaced with a defined contribution plan. As discussed in Chapter 8, in recent years many unions have grudgingly accepted such a switch, but Boeing workers were emboldened by the company's financial strength and their bargaining leverage.

The contract terms that workers eventually accepted included Boeing's commitment to produce a future generation of wide-body planes, the 777, in the Seattle area. Apparently, this guarantee of future investments and the implied employment that would follow helped mollify enough workers to generate a majority vote in favor of the revised offer. Perhaps, in addition, Boeing workers worried that a continuing contract impasse might lead Boeing to accelerate the development of production capacity at the nonunion Boeing plant in Charleston, North Carolina, or at other nonunion U.S. or international sites.

Labor relations were inflamed again in May 2014 when a top Boeing executive essentially said that unless workers at Boeing's Seattle plants reduced their propensity to strike, Boeing would move its production to other parts of the United States and the world. The NLRB general counsel began an investigation when the IAM filed an unfair labor practice complaint over that statement that claimed that it was inconsistent with the right to strike enshrined in the NLRA. Eventually, the IAM dropped its NLRB complaint after Boeing management agreed to make various investments in Seattle-area plants.

In 2009, to expand its production capacity so it could meet a large back order for its popular Dreamliner wide-body plane and to gain greater relative power in their labor negotiations, Boeing transformed a former small-scale airline parts plant into a Dreamliner assembly complex in Charleston, South Carolina. Although the IAM has tried to organize that plant, to date they have not succeeded, and in April 2015, it called off a scheduled representation election, apparently because of weak employee support for unionization.

In March 2016, Boeing announced plans to cut 4,000 jobs from its commercial airplanes division as part of an effort to reduce costs in the face of intense competition from the Airbus Group, which also manufactures wide-body airplanes. Boeing earned a record $96 billion in 2015, but that figure was a 13 percent decrease from earnings of the previous year. Although the company was employing 161,400 employees at the end of 2015, the size of its work force had decreased for the third consecutive year.[14]

Labor Relations at the U.S. Postal Service

Labor relations at the United States Postal Service (USPS) are an interesting case not only because of the large number of employees affected but also because the postal service is an industry facing massive technological change and intense competition. The 500,000 employees who work for the USPS are represented by four unions—the American Postal Workers Union (APWU), the National Association of Letter Carriers (NALC), the National Rural Letter Carriers

Association (NRLCA), and the National Postal Mail Handlers Union (NPMHU). In addition to representing the individuals who sort and deliver the mail, these unions represent clerks, mechanics, vehicle drivers, custodians, and some administrators.

The Internet has led to major shifts in the demand for postal services. On the one hand, the Internet has led to declines in the volume of regular (first class) mail, which has led to sharp declines in USPS revenue. At the same time, the increased commerce that is taking place over the Internet has increased the volume of package deliveries, although a host of private companies, such as UPS, FedEx, and DHL, compete with the USPS for this package business.

The USPS is also undergoing a regulatory transition as it is being transformed from a public enterprise, which had been heavily regulated by the U.S. Congress, to a quasi-private enterprise, which is now expected to survive without government subsidies. Yet Congress still regulates key aspects of USPS business such as the price of stamps and the commitment to delivery service in costly rural areas. The financial pressure that has followed this regulatory shift has led the management of the USPS to look for ways to cut operational costs and to seek concessions from the unions who represent postal workers.

The USPS bargains using standard-looking collective bargaining agreements with the various unions, but it does so under rules that Congress has set that make strikes illegal and state that if the parties reach impasse in contract negotiations either side can request binding arbitration. In recent years, the parties have often made use of binding interest arbitration to set new contract terms. In the 2011 round of collective bargaining, the APWU and the USPS negotiated a four-and-a-half-year contract. However, the other unions and the USPS went to impasse and chose to make use of binding arbitration. The arbitrators (a three-person panel) then issued awards that closely followed the terms of the 2011–2016 APWU-USPS contract. Interestingly, the 2011 arbitration award for the NRLC also introduced a lower (by 10 percent) starting wage for new hires and lowered (by 20 percent) the starting wage of so-called noncareer part-time employees.

In the next bargaining round, in July 2016, an arbitrator set the terms of the APWU's 2015–2018 contract after that union had negotiated to impasse with the USPS. This 40-month agreement provided a base pay increase of 3.8 percent and continued a no-layoff provision for career employees. Influenced by the USPS's demand, the arbitrator gradually reduced the USPS share of employee health insurance premiums (by 1 percent per year, from 75 percent to 73 percent). The arbitrator made clear in his 50-page arbitration award that he was heavily influenced by the principle of pay comparability and by the collective bargaining agreement the NRLCA and the USPS negotiated in 2015.

Political lobbying also plays a critical role on postal service business strategies and labor relations. For example, the four postal unions have periodically lobbied Congress in an effort to block USPS proposals to close some post offices and eliminate Saturday delivery of first-class mail. Meanwhile, the four unions and the USPS have made joint efforts to get Congress to relax current rules that require the current funding of the health care costs of future retirees.[15]

CULTURAL ISSUES IN NEGOTIATIONS

Given the increased internationalization of the U.S. economy and the heightened role multinational corporations play, it is important to consider the role of cultural differences in negotiations. Cultural differences can affect the course of negotiations and can make settlement more difficult when people from different parts of the world negotiate with each other. One study found that agreements took longer and were less likely to be reached when Chinese and Americans negotiated with each other than when the negotiating pairs came from the same country. Chinese negotiators tended to put a higher emphasis on process considerations and preferred to allocate more time to building relationships with their negotiating counterparts, whereas American negotiators wanted to move more quickly to discussion of the substantive issues involved. Paying attention to these cultural differences and their effects on negotiating style is critical to the success of cross-cultural negotiations.[16]

Jeanne Brett provides a comprehensive assessment of the role cultural issues can play in negotiations.[17] Below we provide a summary of the findings in Brett's research on negotiating globally.

It is first important to define culture. Culture is the distinct character of a social group that emerges from the patterned ways people in that group interact socially.

It is valuable to have a "cultural interpreter," someone who not only knows the language but also can interpret the body language and the strategic behavior being exhibited across the negotiating table. The presence of such a person can help negotiators avoid mistakes and correctly interpret the behavior and signals of their negotiating partners. A cultural expert can also help negotiators understand the cultural context of the negotiation, for example, the institutional environment in which the negotiation is embedded.

One key thing to avoid is confusing a cultural prototype (a central tendency) with a cultural stereotype (the idea that everyone in a culture is the same; that there is no distribution around the mean). This is inappropriate because there is always variation in a culture.

Two key elements of cultures that are particularly important for negotiations are the degree to which a culture values collectivism over individualism and the degree to which a culture values egalitarianism over hierarchy. In individualist cultures, social, economic, and legal institutions promote the autonomy of individuals, reward individual accomplishment, and protect individual rights. In collective cultures, institutions promote the interdependency of individuals with the others in their families, firms, and communities by emphasizing social obligations. In a collectivist culture, individual accomplishment reflects back on others with whom the individual is interdependent. Legal institutions support collective interests above individual interests.

When a negotiator comes from a culture that highly values individualism, that may affect his or her interests, goals, and strategic choices. For example, individualistic cultures promote and condone self-interest, which may be reflected in a negotiator's preference for confrontation and/or face saving. In hierarchical cultures, social status determines social power and social power generally transfers

across situations. For example, in hierarchical cultures, social inferiors are expected to defer to social superiors, who have an obligation to look out for the well-being of lower-status parties. No such obligations exist in egalitarian cultures. In egalitarian cultures, social boundaries are more permeable and social status may be both short-lived and variable across situations.

Western cultures, especially Northern European nations, tend to be egalitarian. As you move south from North America to Central and South America, culture tends to be more hierarchical. Asian cultures are usually classified as hierarchical.

Norms (i.e., standards of appropriate behavior) regarding directness or indirectness of communication are also important when negotiating globally. When people communicate indirectly, for example, the same words take on different meanings depending on the context in which they are spoken. Cultures favoring indirect communication tend to be collectivist in nature. People in direct-communication cultures, in contrast, understand each other because they share a vocabulary. Direct-communication cultures also tend to be individualistic.

Research does not support the idea that negotiators from some cultures primarily use integrative strategies and those in other cultures primarily use distributive strategies. Research also shows that there is a substantial variation in cultures in the ability to use integrative strategies.

Summary

The structures and processes of negotiations vary considerably across countries, reflecting differences in the stage of development of labor law, the ideologies and strategies of employers and labor organizations, shifting bargaining power, and national cultures and institutions. While most well-developed labor relations systems seek to regularize negotiations processes as a way of limiting strike activity, breakdowns in negotiations still generate strikes from time to time.

Once it is clear that a negotiations process is called for, the parties need to develop skills and abilities to adapt negotiations practices as conditions change over time. These skills and abilities include:

- Separating distributive (conflicting) issues from integrative issues (those where the parties share common goals) and using modern negotiations tools to avoid miscalculating each other's bottom lines on distributive issues and missing opportunities to pursue their shared interests in integrative issues.
- Building positive, constructive relationships with counterpart negotiators to generate trust in each other's statements as negotiations proceed toward either an agreement or an impasse.
- Adapting the structure of bargaining as competitive conditions and or the mix of employers or unions change over time.
- Exploring new ways to negotiate, such as using interest-based bargaining processes or using other ways of improving problem solving in negotiations.
- Building ongoing processes for implementing and administering agreements reached in negotiations and for resolving disputes during the term of the agreement.

- Recognizing and appropriately adapting to any cultural issues that might be prevalent in a negotiation.

In summary, negotiations processes are the central activity at what we refer to as the middle tier of the three-tiered labor relations framework introduced in Chapter 1. They need to be supported and complemented by effective mediation and arbitration or other dispute resolution processes, topics we turn to in the next chapter.

Discussion Questions

1. Describe the four subprocesses of negotiations according to Walton and McKersie.
2. What are the key aspects of the three stages of a typical negotiations cycle?
3. Describe the Hicks model of strikes.
4. Describe how management strategy influenced the course of a recent negotiation or strike.
5. How do traditional bargaining and interest-based bargaining differ?

Related Web Sites

Boeing workers:
www.boeingworkers.com

UAW auto bargaining:
https://uaw.org/uaw-auto-bargaining

USPS labor relations:
https://about.usps.com/manuals/elm/html/elmapdx_009.htm

Suggested Supplemental Readings

Clark, Paul, Ann Frost, and Howard Stranger, eds. *Contemporary Collective Bargaining in the Private Sector*. Champaign, Ill.: Industrial Relations Research Association, 2013.

Fisher, Roger, and William Ury. *Getting to Yes: Negotiating Agreement without Giving In*. New York: Penguin Books, 1981.

Rosenblum, Jonathan D. *Copper Crucible: How the Arizona Miners' Strike of 1983 Recast Labor-Management Relations in America*. Ithaca, N.Y.: ILR Press, 1995.

Walton, Richard E., and Robert B. McKersie. *A Behavioral Theory of Labor Negotiations*. New York: McGraw-Hill, 1965.

Walton, Richard E., Joel Cutcher-Gershenfeld, and Robert B. McKersie. *Strategic Negotiations: A Theory of Change in Labor-Management Relations*. Boston: Harvard Business School Press, 1994.

Notes

1. See Edward Cohen-Rosenthal and Cynthia Burton, *Mutual Gains: A Guide to Union-Management Cooperation* (Boston: Pitman, 1987); Roger Fisher and William Ury, *Getting to Yes* (Boston: Houghton

Mifflin, 1981); and Richard E. Walton, Joel Cutcher-Gershenfeld, and Robert B. McKersie, *Strategic Negotiations: A Theory of Change in Labor-Management Relations* (Boston: Harvard Business School Press, 1994).

2. Richard E. Walton and Robert McKersie, *A Behavioral Theory of Labor Negotiations* (New York: McGraw-Hill, 1965).

3. It is, of course, possible that there is some joint gain associated with a higher wage rate if labor productivity increases when wages are raised. This might result from the greater motivation workers feel when their pay goes up or from the fact that the firm can recruit better-qualified workers when it offers a higher wage. We ignore such considerations in the text discussion.

4. For evidence on the role of personality traits in bargaining, see Jeffrey Z. Rubin and Bert T. Brown, *The Social Psychology of Bargaining and Negotiations* (New York: Academic Press, 1975), 1583–1596; and Max Bazerman, *Judgement in Managerial Decision Making* (New York: John Wiley, 1986).

5. Margaret A. Neale and Max H. Bazerman, "The Role of Perspective-Taking Ability in Negotiating under Different Forms of Arbitration," *Industrial and Labor Relations Review* 36 (April 1983): 378–388.

6. Arthur M. Ross, *Trade Union Wage Policy* (Berkeley: University of California Press, 1948), 45–74.

7. This case is a real firm we encountered in our field work. The firm preferred not to be identified by name.

8. This cycle is discussed in Carl M. Stevens, *Strategy and Collective Bargaining Negotiations,* (New York: McGraw-Hill, 1963), 41–46.

9. John R. Hicks, *The Theory of Wages* (New York: Macmillan, 1932), chapter 2.

10. Orley Ashenfelter and George E. Johnson, "Bargaining Theory, Trade Unions, and Industrial Strike Activity," *American Economic Review* 59 (March 1969): 35–49.

11. Clark Kerr and Abraham Siegel, "The Inter-Industry Propensity to Strike," in *Industrial Conflict,* ed. Arthur Kornhauser, Robert Dubin, and Arthur M. Ross (New York: McGraw-Hill, 1954), 189–212.

12. Economists have also constructed models that involve "asymmetric information" to explain strike occurrence. These models rely on the notion that management knows the profitability of the firm, whereas the union must guess profitability and use wage offers to get the firm to reveal its true profitability. See, for example, Joseph S. Tracy, "An Investigation into the Determinants of U.S. Strike Activity," *American Economic Review* 76 (June 1986): 423–436.

13. Bureau of Labor Statistics, U.S. Department of Labor, "Major Work Stoppages in 2015," News Release USDL-16-0272, February 10, 2016, Table 1, https://www.bls.gov/news.release/pdf/wkstp.pdf.

14. Paul Shukovsky, "IAM Members Approve by Wide Margin Contract with Boeing Offering Job Security," *Daily Labor Report*, December 8, 2011, A-1, Paul Shukovsky, "IAM Members Agree to End Pensions to Ensure Boeing Doesn't Move Jobs Away," *Daily Labor Report*, January 6, 2014, AA-1; Julie Johnson and Tyrone Richardson, "Boeing to Cut 4,000 Jobs from Commercial Airplane Unit," *Daily Labor Report*, March 30, 2016, A-5.

15. "APWU Members Vote to Ratify Contract; Will Raise Wages by 3.5% over Term," *Daily Labor Report*, May 11, 2011, A-11; Louise C. LaBrecque, "Arbitration Panel Issues 4.5 Year Contract Covering U.S. Postal Service, Letter Carriers," *Daily Labor Report*, January 17, 2013, A-5; "We Have a New Contract," APWU news article 140–2016, July 8, 2016, www.apwu.org/news/web-news-article/we-have-new-union-contract.

16. Anne Liu, Leigh, Ray Friedman, Bruce Barry, Michel Gelfand, and Zhi-Xue Zhang, "The Dynamics of Consensus Building in Intracultural and Intercultural Negotiations," *Administrative Science Quarterly* 57 no. 2 (2012): 269–304.

17. Jeanne Brett, *Negotiating Globally*, 2nd ed. (New York: John Wiley and Sons, 2007).

9 Dispute Resolution Procedures

IMPASSE RESOLUTION

When labor and management fail to reach agreement on a labor contract through a negotiated settlement, they may turn to a procedural technique to resolve the **impasse**. This chapter, which covers issues in the middle (functional) level of Figure 1.1, describes various **dispute resolution** techniques, shows how these techniques affect the negotiations process, and assesses how well the techniques perform in settling impasses.

The chapter first describes mediation, a process by which a third party tries to lead labor and management to a negotiated settlement through improving communication and making recommendations. The discussion then turns to fact finding, a more constraining procedure in which the third party makes their recommendations in a formal report. The next dispute procedure we consider is interest arbitration, where the parties are constrained to adhere to the decision of an arbitrator.[1]

As with other aspects of collective bargaining, new techniques and roles are emerging in the area of dispute resolution. Some mediators are now using interest-based techniques to facilitate labor-management negotiations. These techniques are consistent with the principles of interested-based bargaining (described in Chapter 8). We will describe this approach and contrast it to the mediation of more traditional negotiations. This chapter finishes by discussing how new third-party roles are emerging to better respond to the environmental pressures that the parties confront and to improve labor-management relations.

MEDIATION

Mediation is the most widely used type of third-party intervention in collective bargaining. In **mediation,** a neutral party helps union and management negotiators reach a labor agreement. A mediator has no power to impose a settlement. Instead, he or she acts as a facilitator for the bargaining parties.

Mediators keep the parties talking, they carry messages between the parties, and they make suggestions. Mediators must rely on persuasion and their communication skills to convince the parties to reach a voluntary agreement. A mediator's power is limited by the fact that he or she is an invited guest; either side can ask a mediator to leave.

The Federal Mediation and Conciliation Service

The National Labor Relations Act specifies that the party proposing changes in a contract (usually the union) must notify the Federal Mediation and Conciliation Service (FMCS) at least thirty days before the start of a strike. While the law does not require the parties to use mediation if they reach an impasse, the FMCS includes a staff of experienced mediators who are always ready to assist the negotiating parties if they are invited to do so. Most states have **state mediation and conciliation agencies** that also make mediators available to negotiating parties. Both federal and state mediators are typically available free of charge.

The FMCS, the U.S. secretary of labor, other members of the president's cabinet, or the president is sometimes brought into the mediation process in important disputes or disputes that designated as national emergencies as defined by Title II of the Taft-Hartley Act. Mediation also is frequently used in hospital collective bargaining. The 1974 amendments to the NLRA, which extended the act's coverage to private, nonprofit hospitals, specify that in those hospitals, mediation has to take place before a legal strike can occur.

Mediation under the Railway Labor Act

The Railway Labor Act contains provisions for a mediation phase before a dispute can go to the next step of the impasse process. The staff mediators of the National Mediation Board, the administrative agency for the Railway Labor Act, serve as mediators in bargaining that takes place under the coverage of the Railway Labor Act.

Mediation in the Public Sector

Mediation is more commonly used in the public sector than in the private sector. Almost all of the bargaining statutes that cover state and local government employees call for mediation as the first phase of the impasse resolution process. In the state of New York, for example, on average, about 30 percent of all public sector negotiations reach an impasse and required mediation. Other states have reported somewhat lower rates of reliance on mediation, but all states report rates that exceed the average the FMCS reported reports for the private sector.

In the public sector, staff mediators are employed by the various state agencies that administer the public employment bargaining statutes. In some states, mediation is the province of ad hoc, part-time mediators. These ad hoc mediators generally hold full-time posts as college professors, lawyers, or members of the clergy or in some occupation related to labor-management relations.

Types of Disputes That Can Be Settled by Mediation

Mediation is most successful in addressing conflicts that arise from poor communication and misunderstandings that take place when one party or both parties become overcommitted to their bargaining positions or because of a lack of experience on the part of the negotiators. Mediation is least successful in resolving conflicts caused by the economic context of the dispute, such as the employer's inability to pay or major differences in the parties' expectations.

Where there is a wide divergence in the demands of labor and management, the mediation process is limited because some form of outside pressure is necessary to induce the parties to make major changes in their bottom-line positions. Thus, the mediation process is best suited to helping the parties move marginally beyond their initial positions. Only in conjunction with some external pressure can mediation be expected to succeed in getting the parties to adjust their bottom lines and reach agreement when a large gap exists between them.

Disputes that arise from of intraorganizational conflicts are also difficult to resolve through mediation. Consider again the example of the teacher dispute described in Box 8.1, which involved major internal conflicts within a school board's management. In that case, one mediation session was held before the internal split was resolved but little progress was made. After the session ended, the mediator was informed that the superintendent was going to try to get the board negotiator dismissed. For the next two months, an internal power struggle ensued. The mediator kept in touch by telephone with all the parties, but no formal mediation session took place until the superintendent emerged as the victor of the internal battle and the board negotiator was replaced. Obviously, the mediator in this case had to walk a fine line in trying to convince management to resolve its internal conflicts so that negotiations could proceed.

The less the mediator becomes involved in trying to mediate disputes in one of the parties' organizations, the greater the likelihood that the mediator will be accepted by both parties and the more open the parties will be to the mediator. The difficulty for mediators is that a failure to resolve this sort of internal dispute can make it impossible to resolve the union-management dispute.

WHAT MEDIATORS DO

The ultimate objective of a mediator is to help the bargaining parties reach a settlement. Yet there is more to mediation than the final step that settles the contract. Mediation follows a continuously narrowing course as the mediator seeks to whittle away at the various issues in the dispute. Progress toward a settlement is sometimes possible without necessarily completely resolving any of the issues. In other words, progress has been made if the parties have succeeded in narrowing their differences over the open issues.

Mediation is also a device designed to help the parties "come clean without prejudice"—that is, to explore informally or off the record what would happen if they were to move away from their bottom-line positions. Mediators commonly undertake this exploratory effort to prevent the parties from miscalculating. Thus,

one major function of mediation is to allow informal bargaining to take place, either directly between the parties or indirectly when both parties share confidential bargaining information with the mediator.[2]

Mediators also try to prevent the parties from holding back information about which concessions they are willing to make to avoid a strike in tripartite meetings. It is by no means an easy task for a mediator to identify where the point of resistance is for the parties, since in most instances negotiators are extremely wary about sharing this information openly with a mediator. Instead, mediators must guess at the parties' positions from the statements they make and then try to get the parties to put their best offer on the table.

What mediators do is influenced by whether the parties use traditional or interest-based strategies in negotiations. When negotiators use interest-based techniques, they expect mediators to be skilled facilitators of this type of process. Mediators must be good at generating options through brainstorming and at knowing when to suggest that negotiators form subcommittee or use some other device for gathering additional information. They must also be able to offer suggestions that are more than simple compromises of existing positions—mediators must help invent new options that satisfy the interests of both parties. Most of all, mediators need to watch for statements or actions by one party or the other that might indicate that the process is reverting to traditional positional bargaining and coach the parties about how to avoid this tendency. Finally, mediators must also be skilled teachers of these new approaches to negotiations and must have a keen sense of when to recommend that parties try interest-based techniques. This must be done well before the start of a negotiations process since, as we indicated in Chapter 8, most negotiators need to be trained in these techniques before they can use them successfully in actual bargaining.

The Traits of Successful Mediators

What are the traits of a good mediator? Perhaps the most critical requirement is that the mediator be viewed as trustworthy by the parties. Because this type of intervention is voluntary, no mediator can function well without the trust of the parties.

Trustworthiness is also important because the mediator must obtain confidential bargaining information from the parties. If this information is used indiscriminately, it could destroy a party's bargaining strategy. Although trust can be achieved by reputation, most experienced negotiators will be hesitant to divulge confidential bargaining information merely because the mediator has a good reputation. Thus, the early stages of most mediation efforts (when the mediator is not personally known to the parties) is often taken up with the mediator's attempts to establish his or her trustworthiness

Trust can be lost as the process unfolds. When this occurs, a mediator may voluntarily withdraw from the case or the parties may seek other way of resolving the dispute.

The litany of desirable mediator traits often reads like a modified Boy or Girl Scout oath: A good mediator is trustworthy, helpful, friendly, intelligent, funny,

and knowledgeable about the substantive issues in question. Evidence suggests that nothing substitutes for experience as a quality that helps a mediator gain the trust of negotiators and in other ways promotes successful mediation. Mediation is an art that one must learn by trial and error through on-the-job training.

THE DYNAMICS OF MEDIATION IN TRADITIONAL BARGAINING

Mediation and the strategies of a mediator in a traditional bargaining process often proceed through a cycle of different stages.[3]

The Initial Stage: Gaining Trust

During the initial stages of mediation, the mediator is primarily concerned with gaining the trust of the parties and identifying the issues in the dispute, the emotional climate between the parties, and the distribution of power on each negotiating team. During the initial stages of mediation, the role of the mediator is to ask questions and listen. Normally the mediator will shuttle between the two negotiating teams to explore issues. Separate sessions with the mediator also give the parties an outlet for their pent-up emotions and frustrations.

In these stages the parties will often lash out at each other, exaggerate their differences, and try to convince the mediator of their own rationality and the unreasonableness of their opponent. It is in these early sessions that bonds of trust and credibility can be established between the mediator and the parties.

In short, in the early stage of mediation the parties are testing the mediator. Some of the same grandstanding that occurs in the early stages of the negotiating cycle is repeated at this point in mediation for the benefit of the newest entrant into the process.

The biggest challenges for the mediator at this stage are (1) to accurately diagnose the nature of the dispute and the obstacles to a settlement; and (2) to get something started that will produce movement toward a final resolution. The mediator often hears from one party that "we made the last move, so the next move is up to them," only to proceed to the other side and hear the same thing. The mediator cannot let either party's hesitance to move first halt the process before it is given a chance. Neither party, in all likelihood, wants this to happen, or the mediator would not have been called in the first place.

The Middle Stage: Probing for Potential Compromises

Once the mediator overcomes this stalemate, the next step is to begin an exchange of proposals and test for potential areas of compromise. At this point, it is crucial that the mediator's diagnosis of the underlying sources of conflict is accurate. The mediator is now beginning to intervene more actively by trying to establish a framework for moving toward a settlement. If the mediator has misjudged the underlying difficulties and tries to push the parties toward a settlement prematurely or in a way that does not overcome some of the major obstacles, his or her credibility can be lost.

During this second stage of the mediation process, the mediator continues to ask questions to identify the priorities and bottom-line positions of the two parties. The mediator actively probes for possible acceptable solutions to the outstanding issues. Once the parties have begun to discuss specific proposals, the mediator attempts to determine whether their bottom-line positions are close enough. If they are, then the mediator presses for modifications that would yield an agreement.

The mediator's ability to estimate the parties' bottom-line positions is crucial at this stage, as is the timing. When the mediator judges the bottom-line positions to be close enough to push toward a settlement, he or she takes a more assertive role. The mediator can suggest compromises, push the parties to make compromises that they earlier stated they would be unwilling to make, and, in general, try to close the gap between the parties. Engaging in such active tactics prematurely (that is, when the parties are still too far apart) will damage the mediator's credibility and acceptability.

When conditions are not right for settlement, the mediator must hold back from overly aggressive tactics. When the situation is ripe, however, the mediator must take action or risk losing the opportunity to forge a settlement. The mediator's prior experience helps guide him or her in judging timing. At this point in the process, the art element of mediation comes to the fore.

The Final Stage: The Push to Compromise

As the pressure to reach a settlement builds and the mediator senses that the time for the final push toward resolution is at hand, the mediator becomes more aggressive. No longer passively listening to the parties' arguments and rationalizations, the mediator tries to get the parties to face reality and adjust their expectations. The mediator may push compromise solutions while at the same time being careful to avoid becoming identified with a specific settlement point.

Overidentification with a solution that one or both party rejects can limit the continued usefulness of the mediator. Thus, any compromises the mediator proposes must be presented as merely recommendations.

The dynamics in each of the negotiating teams often change at this point as well. Frequently, team members will differ on the substantive issues. The mediator will often look to the professional negotiators on each team for help in dealing with the more militant team members. Sometimes the reverse is true: the negotiator will look to the mediator for help in calming a militant faction on the bargaining team.

These final-hour sessions often require that someone—the mediator, the professional negotiator, or both—convince the hard-liners that the best deal is at hand and that the final compromises necessary to reach a settlement should now be made. Again, the parties' confidence in the mediator is critical to the success of these final dynamics.

Sometimes the mediator is called on in these final stages to make what are called mediator proposals. Mediator proposals are riskier and more formal ventures than the many other suggestions a mediator makes during the course of an

intervention. A mediator proposal is normally made only when both parties are close to a settlement and the mediator believes that by making the proposal the parties will come to agreement.

In some cases, the mediator may make a proposal that the parties have already tacitly agreed to but for political or other reasons prefer not to offer themselves. Some mediators believe that a proposal should never be made unless the mediator is sure it will be acceptable to both parties.

The preceding description of the dynamics of mediation points out that mediators must be aggressive in pushing the parties toward a settlement—when the climate, the timing, and the pressures on the parties are right. The parties often prefer aggressive mediators, and the aggressiveness of a mediator has been shown to be related to the effectiveness of the mediation process.[4]

Mediation in Interest-Based Bargaining

We have already noted that the role of the mediator in interest-based processes takes on more of the role of an active facilitator, teacher, and coach than is the case in a traditional bargaining process. The cycle of negotiations is likely to be different as well, with less focus on the contract or the strike deadline as the defining moment. Since it is necessary to train negotiators in this method, the mediation process may begin well before the negotiations process starts. The FMCS offers training in interest-based bargaining to parties as part of what it refers to as "preventive mediation."

In Box 9.1, George Buckingham, one of the most experienced and successful interest-based mediators in the FMCS, describes how and when he uses interest-based techniques to facilitate the bargaining process.

BOX 9.1
How Interest-Based Mediation Works

Well before negotiations are scheduled to begin, I provide parties who express an interest or who we believe might be good candidates for an interest-based approach with a one-and-a-half-hour informational briefing. We discuss factors to think about in deciding whether or not to use this approach. In the process of this discussion, I probe to see if there are any factors that would lead me to recommend against using the process, such as no evidence of cooperation in the relationship or a history of contract rejections by one side or the other.

If the parties agree to take the next step, we then hold a two-day required training session for all members of the union and employer negotiating committees. At the end of the training, we make a trilateral (union, employer, and mediator) decision on whether or not to go forward with the process.

The next step is to hold a prenegotiations meeting to agree on two sets of ground rules. The first set are *transitional* ground rules that outline what

will happen if at some stage the interest-based process breaks down and the parties need to return to a more traditional process. This serves as a "road map" back to the traditional process and provides a safety valve for the parties. The second set are *process* ground rules. Here we deal with rules such as how we define consensus decision making, how we will deal with press releases, how and when information will be communicated to constituents, and so on.

Then we are ready for an exchange of issues using an interest-based format. This exchange takes the place of a traditional exchange of proposals, or the laundry list of demands. Each issue is framed as a question that cannot be answered in a yes or no fashion. For example, an issue might be framed as: "How can we accommodate employee needs to have greater time off for funerals and handle staffing needs effectively?" We also agree at this stage on the order we will take up issues and on any information that needs to be obtained in order to discuss them. Bargaining dates are set at this time, after giving adequate consideration to the time needed to collect the necessary data.

For the actual bargaining, we commit to participating in the first two sessions or until the first issue is settled, to returning when the economic issues are taken up, and to being present as the process is coming to an end.

What do I do in these sessions? My basic role is to facilitate the process, to keep the process on a problem-solving track, and to make sure they lay out all the issues and problems and don't stray into a general discussion mode that will take them back to traditional positional bargaining. If, in the rare instance, I feel the need to make a substantive suggestion, I indicate that I am stepping out of my facilitating role to do so.

One of the hardest tasks the parties have is to agree on standards for evaluating options. I suggest three simple standards, but the parties are encouraged to develop their own as well. The three I use are: (1) Can we do it? (2) Does it convey benefits (related to their interests)? (3) Is it acceptable to the constituents?

The parties take up noneconomic issues first. Then, in perhaps about 35 to 40 percent of the cases, I find us using more traditional approaches to resolve the deep-gut economic issues. But even here, when the interest-based process has been successful on the earlier issues, we generally find more of a problem-solving focus and willingness to listen to each other that is often absent in the final stages of a traditional negotiation. The parties are more apt to stay in an interest-based bargaining frame of mind.

Two big differences in my experience with this approach are that the contract deadline and the strike threat are not major factors. In only three out of 60 cases I've mediated in this way has a strike notice been issued, and then it was done to satisfy constituency needs rather than as a serious threat across the table. The overwhelming majority of cases have settled prior to the contract expiration date, while some have gone beyond the

expiration with no serious repercussions. In only one occasion did I hold a mediation session beyond 8 p.m.

I like to use two criteria to judge whether the interest-based approach has been successful. The first is whether the parties use it again the next time. About 80 percent do so. The second is whether the number of relationship or noneconomic issues brought to negotiations decrease the second time around. If interest-based bargaining is able to really solve problems, the number of "relationship" or noneconomic" issues should go down.

Source: Interview with FMCS commissioner George Buckingham, July 1997.

When is this approach likely to be most successful? FMCS commissioner Buckingham suggests that it is most likely to succeed in one of two situations: (1) when the parties already have other elements of a cooperative relationship in place and want to take the next step by carrying problem solving into the bargaining process; or (2) when there will be serious adverse consequences if the parties don't solve a set of problems they face. In either case, the key is to have some strong motivating factor that helps keep the process on course when the going gets tough.

THE POTENTIAL TENSION BETWEEN WHAT IS RIGHT AND WHAT WILL BRING A SETTLEMENT

In theory, a mediator is not supposed to be concerned with the substance of the outcome. Instead, the traditional view is that mediation works because the job of the mediator is simply to bring the parties to agreement. Yet there are times when mediators have trouble accepting this principle. Consider, for example, the mediator in the case described in Box 9.2. Here, the mediator could not let his personal views of management's negotiating style get in the way of a settlement.

All mediators must struggle from time to time with the moral question of how far to compromise their personal values or perceptions of equity in attempting to fashion a contract settlement. The traditional answer to this question has been that the mediator's primary responsibility is to help the parties reach an agreement and to keep his or her values and preferences, or the values and preferences of the larger society, out of the process. According to this view, the mediator should not attempt to create a settlement that would be most consistent with the public interest. The traditional view is that the way the mediator can best represent the public interest is by helping prevent or ending an impasse.[5]

The moral dilemma is even more difficult to resolve if questions of individual rights are part of the settlement package one of the parties prefers. Mediators will continue to struggle with this moral dilemma and decide how high a priority they are willing to put on the singular goal of achieving a settlement.[6]

BOX 9.2
Report of a Frustrated Mediator

This dispute was resolved after one long night of mediation. The parties had been negotiating for over a year. A fact-finding report had been issued, and considerable progress had been made on economic issues. The major remaining unresolved issue was whether these employees [janitors, bus drivers, and cafeteria workers in a school district] would have binding grievance arbitration in their contract. . . . It was clear that the [school] board was adamantly opposed to binding arbitration. . . . The [mediation] process was made more frustrating by the condescending attitude that the district administrators took toward the members of the bargaining unit. Unfortunately, my role at this final step of the process was simply to get the union negotiators to face the reality that there was no way they could get an agreement containing binding arbitration. . . .

If I had let my own feelings toward the board negotiating team surface during mediation, the process would have not only broken down but it would have been even harder for the parties to put this long and frustrating case behind them. Consequently, one walks away from this type of dispute with a lot of pent-up anger and frustration.

Some mediators, especially those who favor the use of interest-based techniques, reject the traditional view. Instead, they argue that an effective mediator will help the parties articulate their basic interests and then help steer the process to results that best serve their interests. In this view, the substantive terms of the settlement are as important to the success of mediation as a settlement is.

FACT FINDING

When **fact finding** takes place, a third party (a fact finder) is called in to study the issues that are in dispute between labor and management negotiators who have reached an impasse in their negotiations. After gathering facts, the fact finder then makes a report or an announcement that may be made public. The fact finder's report often includes recommendations about what the fact finder believes is an appropriate settlement of the impasse. Fact-finding is premised on the hope that the recommendations and a neutral report will bring sufficient pressure to bear on the parties to induce them to accept the recommendations of the fact finder or to use them as the basis for a negotiated settlement.

Fact finding is rarely used in the private sector (like mediation, the NLRA does not require it), but it is commonly used in the public sector.[7] Fact finding also has been frequently used in negotiations that are covered under the Railway Labor Act (the Railroad Mediation Board can call for it). The national emergency

dispute procedures of the NLRA also authorize fact finding as part of the process by which the president can call into action an emergency impasse resolution board.

A Case of Fact Finding

The following describes the use of fact finding in a dispute between a teachers' union and a school district.

> A neutral [person] first attempted to mediate the dispute but was discouraged by the professional negotiators for each side. They explained that they knew what their differences were and that if it was up to them alone they could settle the dispute without the help of a neutral party. The problems were that the school board was unwilling to accept what both negotiators agreed was a reasonable salary settlement and one faction in the union was unwilling to compromise on a contract-language issue. The mediator therefore agreed to proceed directly to fact finding. In the course of the hearing, the two negotiators presented their cases in ways that made it clear to the fact finder what they would agree to and thus what they wanted the fact finder to recommend. The fact finder's recommendations closely followed these tacit admissions. Both negotiators used the "neutral's recommendations" in selling the tacit agreement to their constituents.

INTEREST ARBITRATION

Interest arbitration involves the use of a third party (an arbitrator) who is empowered to impose a settlement in a contract dispute. In interest arbitration, the arbitrator sets the terms of the contract. Thus, interest arbitration is different from grievance (or rights) arbitration, in which an arbitrator is used to settle a dispute during the term or about the implementation of an existing contract (see Chapter 12).

Interest arbitration is not used very often in the private sector in the United States. The few exceptions in the private sector have been major league baseball (see Box 9.3), national emergency disputes under the Taft-Hartley or Railway Labor Acts or cases where the parties voluntarily submitted their disputes to arbitration. Interest arbitration has been used more frequently to settle impasses in public sector bargaining.

The NLRA gives labor and management the right to strike over impasses and this leads to limited use of interest arbitration. Many proponents of collective bargaining in the private sector have long argued that the right to strike (and thus the absence of interest arbitration) was essential for the preservation of **free collective bargaining**.

As one scholar put it over 35 years ago:

> In the case against compulsory arbitration there are distinguished prosecutors galore, and the catalog of inevitable disasters runs the gamut from simple bad decisions to dislocation of the economic foundations of free enterprise. The division is not liberal/conservative, nor labor/management—there is no division. All the principal authorities are in agreement.[8]

BOX 9.3

Major League Baseball Salary Arbitration Procedure

Eligibility

Any Player or Club may submit to salary arbitration with the consent of the other party. However, a player [with] between three and six years of Major League service may submit to salary arbitration without the consent of the other party.

Selection of Arbitrator

The Players Association and the Player Relations Committee shall annually select the arbitrators.

Procedure

Within three days of salary arbitration submission, the Players Association and the Players Relations Committee exchange salary figures. The Player has the option of withdrawing within 7 days of the receipt of the Club's salary figure. And in the event the Club or Player reach a salary agreement before the arbitrator reaches his decision, the matter shall be withdrawn from arbitration.

Timetable and Decision

The Player and the Club submit the salary figures to the arbitrator at the hearing. The arbitration hearing is held as soon as possible after submission and scheduled between February 1 and February 20. The arbitrator may render his decision on the day of the hearing, and shall make every effort to decide no later than 24 hours following the close of the hearing. Finally, the arbitrator is limited to awarding only one or the other of the two figures submitted.

Conduct of Hearings

Each party is limited to one hour for initial presentation and a half-hour for rebuttal and submission. There are no continuances or adjournments.

Criteria

The criteria used in determining the Player's worth include the quality of the Player's contribution to his Club during the past season (including his overall performance, special qualities of leadership and public appeal), the length and consistency of his career contribution, the record of the Player's past compensation, comparative baseball salaries, the existence of any physical or mental defects on the part of the Player, and the recent performance record of the Club. In addition, any evidence relevant to these criteria may be submitted as evidence.

Source: Basic Agreement between the American and National League of Professional Baseball Clubs and the Major League Baseball Players Association, January 1, 1986.

In this view, interest arbitration should be limited to cases of dire national emergency or to disputes in which the parties themselves decide it is in their interest to submit their dispute to a procedural substitute for a strike.

The Use of Interest Arbitration in the Public Sector

As the demand for public sector bargaining became more vocal in the late 1960s and early 1970s policy makers had to make a difficult choice: unions were calling for collective bargaining rights, while elected officials were reluctant to grant public employees the right to strike. Because both unions and management had little experience with interest arbitration and doubted its effectiveness, most states initially turned to fact finding as a compromise between the right to strike and interest arbitration. By the late 1970s, about half the states that had endorsed collective bargaining for public employees turned to some form of arbitration for resolving disputes between city governments and their police and firefighters.

Since interest arbitration has been used primarily in the public sector, the public sector record reveals how well it works. This record is discussed below along with occasional references to experience with arbitration in the private sector.

Types of Interest Arbitration

There are many different forms of interest arbitration. One key difference is whether the procedure is voluntary or compulsory. **Voluntary arbitration** is a dispute resolution system in which the parties agree to submit their differences to arbitration. **Compulsory arbitration** is a system in which law requires the parties to submit their unresolved differences to arbitration if they cannot reach a negotiated settlement on their own.

Another important distinction is the difference between conventional arbitration and final-offer arbitration. **Conventional arbitration** (which can be either voluntary or compulsory) is a dispute resolution process in which the arbitrator is free to fashion any award he or she deems appropriate. Although the conventional arbitration award may be a compromise between the proposals of the employer and those of the union, the arbitrator is also free to accept either party's proposals or, for that matter, to go below the employer's offer or above the union's offer (although that rarely happens).

Terminology Used in Final-Offer Interest Arbitration

In **final-offer arbitration**, the arbitrator must choose either the employer's proposal or the union's; the arbitrator may not fashion his or her own compromise. As a further distinction, final-offer arbitration may be handled on a total package basis—that is, the arbitrator must choose the complete offer of the employer or the complete offer of the union on all issues. Final-offer arbitration can also be handled on an issue-by-issue basis. The arbitrator, for example, might choose the employer's wage offer, the union's offer on health insurance, and the employer's offer on vacation days.[9]

There is yet another complication. The arbitrator can be an individual or a panel of individuals. Panels can either be composed of all neutrals or they can be

tripartite. Tripartite panels are composed of one or more representatives of the employer, one or more representatives of the union, and one or more neutrals.

Debates over the Performance and Effects of Interest Arbitration

What does the use of interest arbitration do to the parties' ability to negotiate on their own? What kinds of settlements do arbitrators impose and how do the arbitrators' settlements compare with the settlements labor and management reach on their own? Does interest arbitration prevent strikes? These questions are part of the controversy that surrounds the use of interest arbitration. The evidence on these issues is only summarized here because public sector experience with interest arbitration is examined in detail in Chapter 13.

Interest arbitration in the public sector has had a better record of preventing strikes than fact finding or bargaining without any impasse procedure has. Although no dispute resolution procedure, including interest arbitration, can prevent all strikes, interest arbitration appears to reduce the probability of strikes more than fact finding does.

To date there is little evidence that interest arbitration has been overused where it is available. The vast majority of disputes tend to be settled without resort to interest arbitration. Even in states where that have used interest arbitration for thirty years, the rate of cases going to interest arbitration rarely exceeds 25 percent.[10]

The evidence of the effect of arbitration on contract terms is that arbitrators tend to impose settlements that are not very different from the settlements that parties who bargain reach where arbitration is not available as an impasse resolution procedure. The use of interest arbitration across a state to settle public sector disputes does appear to narrow the range of settlements by eliminating extremely high and extremely low settlements. The effect of interest arbitration on contract terms such as wage levels appears to be modest. Where an effect has been measured, arbitration tends to lead to wage levels that are 5–10 percent higher than wages in jurisdictions where arbitration is not available.

Voluntary Interest Arbitration in the Private Sector

Voluntary interest arbitration schemes have been used in the private sector in electrical construction, large construction projects (such as the Cape Canaveral space center and the Alaska pipeline project), and newspapers.

The only significant private sector use of interest arbitration now occurs in major league baseball. As noted earlier, major league players and baseball club owners have negotiated a master collective bargaining agreement for thirty years. That master contract stipulates that the salaries of individual players are determined through negotiations between each player and his respective club owner.

As Box 9.3 shows, the master agreement requires that a player's salary be set by an arbitrator if an impasse is reached between the player and the club owner in salary negotiations. The arbitrator is restricted to choosing the final offer of the player or the final offer of the owner. The terms and conditions of employment for baseball players other than salary are not subject to interest arbitration. Club

owners became very dissatisfied with the use of arbitration in the 1990s and tried to eliminate it in negotiations and during the strike of 1994, but they were not successful on this point. Instead, the parties modified the procedure by agreeing to phase in the use of three neutral arbitrators per case rather than a single arbitrator.

Voluntary interest arbitration has also been used on an ad hoc basis as a conflict resolution device of last resort. From time to time difficult strikes, such as disputes between the United States Postal Service and postal worker unions, have been resolved with an agreement to arbitrate (see Chapter 8).

BOX 9.4

Interest Arbitration in the California Agriculture Industry

As one of the most essential industries in California, the agriculture industry had been under intense pressure to find a solution to a subpar collective bargaining system. Because of this, in 2002, the California legislature passed a law that created mandatory interest arbitration for cases where employers and unions in the agricultural industry were unable to come to a consensus while bargaining for an initial collective bargaining agreement. The law was quickly subject to legal challenge, although the courts ultimately denied the challenge.

Hess Collection Winery, an agricultural employer in the Napa Valley, filed an appeal claiming that the legislature had no authority to pass a law mandating interest arbitration. In fact, it went as far as to say that mandating interest arbitration only in the agricultural sector of the state's economy seriously violated equal protection guarantees in the state constitution. As a result of this appeal, the law was brought to the California Court of Appeals.

On July 5, 2006, because of the need to efficiently reach an agreement in collective bargaining contracts in the industry and because the statute only applies to the initial bargaining offer, the California Court of Appeals upheld the previous decision and deemed mandatory interest arbitration lawful because the court believed it to be constitutionally accurate. Justice Richard Sims of the appeals court stated that the law "bears a rational and conceivable relationship to a legitimate state purpose," and as such, it passes the constitutionality test and should therefore be allowed. Sims went on to say that "agricultural employees are in an especially unequal bargaining position with respect to their employers and that their health, safety, and welfare require special protection." Therefore, Judge Sims concluded that extra security must be awarded to them and the law mandating interest arbitration would help "protect the industry by promoting stability in agricultural employment."

Source: "California Court Upholds Constitutionality of State's Mandatory Interest Arbitration Law," *Daily Labor Report*, July 7, 2006, AA-1.

In voluntary interest arbitration schemes, the parties normally limit the discretion of the arbitrator. In baseball, the arbitrator rules only on player salary (although other parts of the master baseball contract are subject to grievance arbitration).

The key to the negotiation of voluntary interest arbitration plans is that both parties must perceive benefits in agreeing to set aside the right to strike. Labor and management generally voluntarily accept interest arbitration only when strike costs are high.

The Structure and Process of Interest Arbitration

A wide array of choices is available for designing the structure of interest arbitration systems. These structural options determine the nature of the decision-making process in interest arbitration in important ways. In fact, the structure the parties choose is a reflection of their fundamental views on the appropriate functions of an interest arbitration system. This section describes two types of decision-making processes in interest arbitration and suggests how these are influenced by the structural design of the system.

A Combined Mediation-Arbitration Approach

The two decision-making processes available are (1) a mediation-arbitration process; and (2) a judicial decision-making process. Advocates of the **mediation-arbitration** process view interest arbitration as an extension of the collective bargaining process in which the neutral arbitrator seeks to shape an award that is acceptable to the parties. Mediation-arbitration places a premium on using the interest arbitration proceeding as a forum for continued negotiations or mediation, albeit with the arbitrator holding the ultimate authority to decide on the contract.

Those who advocate the mediation-arbitration approach claim that no system of interest arbitration can hope to survive for long unless it produces outcomes that are acceptable to the parties.

A Judicial Approach

The countervailing view of interest arbitration holds that the arbitrator should focus on the "facts" of the case. In this judicial approach, the arbitrator adheres strictly to predetermined criteria and is not influenced by the bargaining power or preferences of the parties.

NONTRADITIONAL DISPUTE RESOLUTION

The need for skilled third parties in conflict resolution and problem solving is not limited to the formal negotiations process. Indeed, in recent years a variety of new **dispute resolution** roles have emerged in settings where labor and management have been attempting to achieve fundamental changes in their bargaining relationships.

For example, neutrals, for example, are increasingly being called on to chair or facilitate labor-management committees, to serve as consultants to labor and

management in quality-of-working-life programs, to facilitate the joint planning or joint design of a new plant or work system, or to work on other experimental projects designed to solve long-standing problems in a bargaining relationship. All of these roles require the skills of a labor mediator. In addition, these roles differ from traditional mediation or arbitration roles in several important ways.

First, most require that problems be addressed on an ongoing basis.[11] Often this requires that the parties first undergo a team-building effort to change their attitudes and to increase the level of trust they have in each other.

Second, these third parties must have specialized knowledge of the substantive problems the parties face. The third party is expected to be a consultant who brings technical expertise to discussions of the problem and is sensitive to the needs of both labor and management.

Third, the time horizon of the process tends to be very long. Whereas the traditional mediator is mainly concerned with achieving a settlement of the immediate impasse, third parties involved in these new roles must focus on the effects of any decision on the quality of the longer-term relationship.

The behavior of the parties to these new processes is also significantly different from traditional labor-management behavior. For example, to be successful, long-term problem solving requires the parties to share information more readily than they do in traditional collective bargaining.

In response to this growing demand, the FMCS has increased its emphasis on what it calls "preventive mediation"; that is, programs designed to train the parties in state-of-the-art labor-management practices or to facilitate more directly efforts to improve relations in particular industries or particular companies and unions.

At the same time, however, the parties may still need to turn to the traditional mediation and arbitration processes. In short, both effective conflict resolution and longer-term problem solving are critical to the success of contemporary collective bargaining relationships.

KEY ORGANIZATIONS AND AGENCIES INVOLVED IN IMPASSE RESOLUTION

The key organizations and agencies that are involved in the resolution of impasses are summarized below.

American Arbitration Association (AAA): A private nonprofit organization that facilitates the process of arbitration. The AAA maintains lists of arbitrators and makes facilities available that can be used for arbitration hearings. The AAA offers seminars to train young arbitrators and to keep experienced arbitrators informed about emerging developments. Much of the arbitration work AAA perform arbitrators is grievance arbitration, but AAA arbitrators also become involved in interest arbitration.

Federal Mediation and Conciliation Service (FMCS): An agency of the federal government mandated by the National Labor Relations Act. The NLRA requires labor and management to notify the FMCS at least thirty days before a strike. The FMCS includes a staff of 250 mediators who offer their services to labor and management involved in impasses.

National Academy of Arbitrators (NAA): A professional society of experienced arbitrators. Most of the cases NAA arbitrators hear are grievance arbitrations, although NAA members are also involved in interest arbitration.

National Mediation Board (NMB): An administrative agency created by the Railway Labor Act. One of the functions of the board is to mediate disputes between labor and management that arise in the transportation industries covered by the Railway Labor Act.

State mediation and conciliation agencies: A variety of agencies exist at the state level to facilitate the mediation of labor impasses. In states that grant public employees bargaining rights, a separate agency concerned with public sector bargaining impasses frequently exists. In New York, for example, the Public Employment Relations Board (PERB) provides mediation assistance among its many functions.

Summary

This chapter described the three major impasse resolution procedures—mediation, fact finding, and interest arbitration. The use of these procedures has varied extensively. Mediation has been commonly used in both the private and public sectors. Fact finding and interest arbitration, in contrast, have been used in the public sector with only a few exceptions.

The procedures also vary in the degree to which they constrain the actions of labor and management. At one extreme is mediation, where the parties can, and sometimes do, dismiss the mediator or ignore the advice given. At the other extreme is binding interest arbitration, where the parties must follow the decision of the arbitrator.

The purpose of any impasse resolution procedure is to help the parties achieve a contract settlement that both labor and management find acceptable and that helps sustain a successful labor-management relationship. Good mediators, fact finders, and arbitrators understand the issues that divide labor and management and have the ability to offer creative solutions to these problems.

Discussion Questions

1. Describe the objectives of mediation.
2. What are the three stages that typically occur in a mediation?
3. Discuss some of the criticisms of interest arbitration.
4. Contrast mediation-arbitration and judicial arbitration.

Related Web Sites

Federal Mediation and Conciliation Service (FMCS):
http://www.fmcs.gov

National Mediation Board (NMB):
http://www.usa.gov/federal-agencies/national-mediation-board

Alternative Dispute Resolution Forum:
https://www.adrforum.com/

Suggested Supplemental Readings

Cullen, Donald E. *National Emergency Disputes*. Ithaca, N.Y.: New York State School of Industrial and Labor Relations, Cornell University, 1968.

Goldberg, Stephen B., Eric D. Green, and Frank E. A. Sander. *Dispute Resolution*. Boston: Little, Brown, 1985.

Kolb, Deborah. *The Mediators*. Cambridge, Mass.: MIT Press, 1982.

Pruitt, Dean G., and Jeffrey Z. Rubin. *Social Conflict: Escalation, Stalemate, and Settlement*. New York: Random House, 1986.

Rubin, Jeffrey Z. *Dynamics of Third-Party Intervention*. New York: Praeger, 1981.

Notes

1. The parties are constrained to adhere to the decision in a binding arbitration procedure. As discussed below, occasionally parties will choose nonbinding arbitration.

2. Carl M. Steven, *Strategy and Collective Bargaining Negotiation* (New York: McGraw-Hill, 1963), 142–146.

3. For analysis of mediation strategies, see Kenneth Kressel, *Mediation: An Exploratory Survey* (Albany, N.Y.: Association of Labor Mediation Agencies, 1972); and Deborah Kolb, *The Mediators* (Cambridge, Mass.: MIT Press, 1982).

4. One study shows a positive effect for mediator aggressiveness and noted that the more intense or difficult the dispute, the more aggressive the mediator tended to be. See Paul F. Gerhart and John E. Drotning, "Dispute Settlement and the Intensity of the Mediator," *Industrial Relations* 19, no. 3 (1980): 352–59.

5. Eva Robbins, *A Guide for Labor Mediators* (Honolulu: Industrial Relations Center, University of Hawaii, 1976).

6. For a good discussion of this dilemma, see William E. Simkin, *Mediation and the Dynamics of Collective Bargaining* (Washington, D.C.: Bureau of National Affairs, 1971), 34–40.

7. Fact finding is the most common form of dispute resolution for occupations other than police and firefighters in the public sector (for these two occupations, interest arbitration is most common).

8. Orme Phelps, "Compulsory Arbitration: Some Perspectives," *Industrial and Labor Relations Review* 18 (October 1964): 8.

9. Some final-offer procedures allow the arbitrator to choose the recommendation of a fact finder involved in an earlier step of the process.

10. Mark Thompson and James Cairnie, "Compulsory Arbitration: The Case of British Columbia Teachers," *Industrial and Labor Relations Review* 27 (October 1973): 3–17.

11. Stephen B. Goldberg, Jeanne M. Brett, and William Ury, "A Study in Metamediation," unpublished manuscript, School of Law, Northwestern University, Evanston, Illinois, 1987.

10 Contract Terms and Employment Outcomes

THE IMPORTANCE OF WORKPLACE OUTCOMES

Of critical concern to all the parties involved in labor relations is the nature of contract terms and employment outcomes. In the United States, many terms and outcomes are implemented at the workplace. Our examination of the topic of workplace outcomes moves us to the workplace level of our three-tiered framework. Workplace-level issues include wages, work rules, work organization, employment security, and health and safety. These are of primary concern to employees and to other parties. In addition to these outcomes, an array of rules and procedures guides the roles and responsibilities of supervisors and employees and how work is done. These include the way pay is determined and administered and the degree of influence, if any, that employees' seniority has on pay, promotions, shift preferences, and other matters.

The workplace is dynamic. Employers make adjustments in response to external factors that affect it. As we trace this process, we distinguish between short-term and long-term effects. In the short term, management can adjust technology and how work is organized on the shop floor. In the long term, management's action will affect where work is done: management might choose to relocate production, perhaps even to another country, in response to union actions or the impact of government policies.

As they make adjustments, employers are constrained by the logic of employment patterns that we discussed in Chapter 5. Certain changes in one employment practice will interact with and work best with specific sets of work practices. In addition, our analysis of workplace outcomes takes into account the constraining influence of the various employment patterns we discussed in Chapter 5.

THE EFFECTS OF UNIONS AND GOVERNMENT POLICIES ON WAGES

The actions of unions and government policies can both directly affect wages (or some other employment condition). These direct effects will set off a chain

reaction. Management is likely to make adjustments that have consequences for employment conditions. Management first makes short-term adjustments and then longer-term, more strategic adjustments.

Figure 10.1 diagrams the chain reaction set off when a union or some other external force raises wages. (Similar chains can be traced for other employment conditions.) There are three stages in this chain reaction.

Stage 1: Primary Effects

The primary effects of an increase in wages are on the compensation employees receive. Unions can push for higher wages through collective negotiations, or a wage increase might come as a result of an action by a government (for example, through an increase in a statutory minimum wage) or through pressure an NGO brings to bear upon a company.

Stage 2: Management's Short-Term Adjustments

The central motivation for the employer is to try to recoup the costs associated with negotiated or policy-imposed wage increases through increasing productivity or through some other measure, including possibly reducing output.

Increases in labor costs can produce some combination of the following responses by the firm: (1) a reduction in the scale of output and employment; (2) an increase in the price of the product; or (3) a substitution of capital for labor. All of these are mechanisms for raising the productivity of labor. These reactions from management may lead to higher prices or to reduced employment opportunities, both of which are costly to the broader society. At the same time, society will likely value the union's or government policy's primary effects, namely, the higher wages of employees who are directly receiving the higher wage, the indirect benefit to some employees whose employer feels pressures to match the higher wage rates to stay competitive, and other businesses that benefit from increases in the purchasing power of the employees earning higher wages.

It is also possible that after identifying ways to recoup the costs imposed by a wage increase, management may end up with productivity that is higher than it was before. In the 1940s, Sumner Slichter was the first to argue that such a **shock**

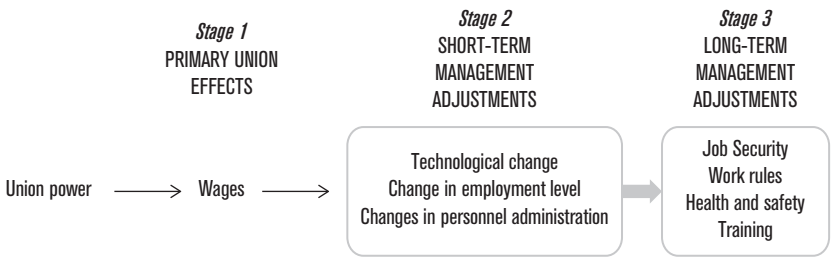

Figure 10.1. The consequences of union effects on wages

effect (i.e., improvements in efficiency after unionization) is prevalent in management's response to unionism.[1] An increase in wages, for example, may induce employees to quit less frequently and thereby reduce a firm's hiring and training costs. Higher wages also should attract better-qualified workers. Improved wages might also lead employees to be more motivated and to work harder and/or smarter.

Stage 3: Management's Long-Term Adjustments: Employment Pattern Responses and Location of Production

Over time, the impact on employment outcomes of union contracts, government policies, or others force can lead management to make strategic adjustments that affect both the employment patterns used in the organization and the location of production. For example, management may decide to outsource all or parts of a company in response to pressure to increase wages and improve other working conditions. Alternatively, an employer might change its employment pattern. For example, an employer could shift from a low-end bureaucratic approach to a high-end bureaucratic or an HRM approach in combination with a strategy for moving up market and competing on the basis of product innovation and quality instead of low product cost. The flexibility and skills orientation of the HRM pattern could mesh well with a more quality-oriented product strategy.

Or an employer could go in the opposite direction, responding to an increase in wages or improvements other work conditions by trying to lower production costs by moving to a low-end bureaucratic employment pattern, or by outsourcing parts of the production process The latter path can be viewed as an international version of the **escape** strategy (i.e., the efforts of managers to avoid unionism) that Walton, McKersie and Cutcher-Gershenfeld describe.[2] In some situations escape strategies have involved outside firms who take over or purchase operations and then extract wage concessions using the threat of moving the work to a lower-cost setting as leverage.[3] In the last chapter of this book, we analyze the long-term implications of various business strategies and what governments can do to promote favorable social outcomes.

THE EMPIRICAL EVIDENCE RELATED TO THE EFFECTS OF UNIONS ON WAGES AND OTHER WORKPLACE POLICIES

Wages are of central importance to both employees and their employers. How do the earnings of union workers compare with what union workers would have earned if there had been no unions anywhere in the economy? This comparison is called the **absolute union wage effect.** However, because it is extremely difficult to estimate what employment conditions would have been in the absence of unions, most research has focused on assessing the relative effect of unions on wages. The **relative union wage effect** compares the earnings of union and nonunion workers.[4]

RELATIVE UNION WAGE EFFECTS

Empirical studies indicate that the relative union wage effect averages 15 to 20 percent; that is, unionized workers earn roughly 15 to 20 percent more than nonunion workers.[5] Various studies also show that the wage effects of unions vary over time (over the course of the business cycle, across occupations, across industries, and by the gender, race, education, and age of workers.

Some of the key variations in union wage effects include the following:

1. Unions have a greater positive effect on the wages of blacks, particularly black men, than on whites. There also is evidence that obtaining a union job and remaining on that job pays off more for black youths than for white youths.[6]
2. Unions reduce the effects of age and education on earnings. That is, unions increase the earnings of younger workers by raising the entry-level salaries on union jobs above what an inexperienced worker would be paid in a comparable nonunion job. At the upper end of the wage distribution, the effects of seniority provisions in union contracts protect older workers from wage erosion after they pass their peak productivity years.[7]
3. Unions have larger wage effects in some occupations. One study estimated the following difference in union pay versus nonunion pay by occupation: unionized laborers, 42 percent higher than nonunion laborers; unionized transportation equipment operators, 38 percent higher; unionized crafts workers, 19 percent higher; unionized operatives, 18 percent higher; unionized service workers, 15 percent higher; unionized managers, 2 percent higher; unionized clerical employees, 2 percent higher; and unionized sales workers, 4 percent higher.[8]
4. Union wage effects also vary across industries. Union wages are relatively higher for white male blue-collar workers: 43 percent higher in construction; 16 percent higher in transportation, communications, and utilities; 12 percent higher in nondurable goods manufacturing; and 9 percent higher in durable goods manufacturing.[9]
5. Unions reduce the difference between white-collar and blue-collar incomes in firms where blue-collar workers are organized. Unions also reduce intra-industry wage differentials by promoting wage standardization.[10]
6. Unions produce larger relative wage effects in less concentrated (less monopolistic) industries. This is because even in the absence of unionization, highly concentrated industries would pay relatively high wages.[11]

Variation in Union Effects over Time

Union effects on wages and other employment conditions vary substantially over time. As is the case with union growth, both cyclical and structural factors affect wages and employment conditions.

The data show that the largest relative wage effects of unions happens during periods of recession because unions have the capacity to resist wage cuts, while nonunion employees are not able to resist wage cuts during business downturns.

As a result, unionized employees do relatively better than nonunion employees during business downturns. During business upturns, however, these relative wage effects decline.

The decline in unions in recent years, an overall decline in real wages, an increase in income inequality, and a decline in the proportion of the work force covered by health insurance and pensions highlight an important policy question: To what extent are these trends due to the declining power and coverage of unions? While the time series data needed to fully address these questions are only now becoming available to researchers, the preliminary evidence is that union decline is an important contributor to these trends.[12]

Research Techniques

The following section discusses the techniques researchers use to identify the impact of unionism on worker wages. It may be of special interest to readers with statistical training. Statistical techniques and problems that are similar to those discussed below are also involved in analysis of union impacts on other employment terms.

The research technique most frequently used to measure relative union wage effects is regression analysis in which the wages of a pool of union and nonunion workers are used as the **dependent (or outcome) variable** and the union status of each individual or group of workers is entered as an **independent (or explanatory) variable**, along with a series of controls for other determinants of wages.[13] The types of control variables normally included in these regression equations are (1) human capital or labor supply characteristics, such as the age, education, experience, and training of workers; (2) the region of the country; (3) the race and gender of workers (as measures of the effects of discrimination); (4) the industry and occupation; and (5) the size of the firm.

Several technical problems make it difficult to know if estimates of the relative **union effects** are a good approximation of the absolute effects of unions on employment conditions. The major problem in sorting out the net effects of unions is that union wages may spill over to the nonunion sector because nonunion employers may raise or, in the extreme case, match union-negotiated wage increases in order to deter their employees from unionizing. In such a case, the nonunion wage is higher than it would be otherwise because of the **threat effect** of unionization. Thus, estimates of the relative union wage effect may understate the absolute effect of unions on wages because they do not fully account for the extent that union wages have spilled over to the nonunion sector.

On the other hand, by raising wages, unions may induce unionized firms to cut back on employment. The workers who have been displaced then seek employment in nonunion firms and industries. This **supply effect** results in lower wages for the nonunion workers. The supply effect leads to estimates of the relative union wage effect that may overstate the differential between union wages and the wages that would exist if there were no union. Researchers have not been able to identify whether the threat effect is larger than the supply effect of unions.

Another highly technical problem arises when union membership is influenced by wage levels.[14] Unions tend to organize high-wage industries or workers. As a result, the union coefficient in a single-stage regression equation captures both the effects of unions on wages (the true effect of interest in this case) and the effects of wages on unionization (that is, the fact that higher-wage jobs attract more union members). Estimates of the influence of unions on wages may therefore be overstated or understated unless this reciprocal causality is accounted for.

THE EFFECTS OF GOVERNMENT ON EMPLOYMENT TERMS AND OUTCOMES

In addition to its role as an employer, the U.S. government plays two other main roles in labor relations—directly regulating the terms and conditions of employment and regulating how organized labor and management relate to each other. The direct regulation of terms and conditions of employment in the United States is limited to the areas of employment discrimination, worker safety, unemployment compensation, minimum wages and maximum hours, and retirement. The 1964 Civil Rights Act prohibited discrimination in employment on the basis of race, color, sex, religion, or national origin. This law was subsequently strengthened and additional laws were passed to prohibit discrimination against older workers and disabled workers (see Chapter 3).

Beginning in the 1980s, there was a great deal of legislative activity in the broad field of employment relations, in part to fill gaps the weakening influence of unions created. Legislative initiatives in the areas of the minimum wage, termination of employment, race and sex discrimination in employment, pensions, health and safety, plant closing, drug testing, race and sex discrimination, discrimination against disabled workers, employers' use of polygraphs, and family and medical leave have produced many new laws. At the same time, the general rule of employment in the United States continues to be that of employment at will, where there is no legal regulation of the reasons employers fire employees and employees have no general entitlement to reasonable notice or severance pay on dismissal.

Unemployment benefits are provided on a state-by-state basis, but with some federal control and funding. These benefits disburse payments to persons who have become involuntarily unemployed and are seeking work. The duration of payments is less in the United States than it is in most other countries. Federal and state wage and hour laws ensure a minimum level of pay and a premium pay rate for overtime work, although many workers are excluded from the coverage of these laws.

Retirement benefits are regulated in two main ways. First, through the Social Security system, employers and employees are required to pay a proportion of wages into a government fund. The government pays pensions out of this fund to eligible retired employees (Social Security Act). The second way the government controls pensions is by regulating the private pension funds that employers set up voluntarily. The Employee Retirement Income Security Act 1974 (ERISA)

requires that retirement plans be financially secure and insures these plans. It also mandates that employees become permanently vested in their retirement rights after a certain period. In recent years, more and more employers have begun bypassing ERISA's standards for defined benefit retirement plans because of the growth of defined contribution plans, which are not regulated as extensively.[15]

Unlike most other advanced industrialized countries, in the United States, health insurance is mostly provided through employer benefit plans. These employer plans are subject to extensive government regulations, which were expanded by the 2010 Affordable Care Act, which overhauled the U.S. health care system. Although this act introduced major changes to the health care system, it maintained the predominantly employer-based system of insurance provision, ensuring that health insurance will continue to be a major issue in U.S. collective bargaining.

Given the increased pace of globalization, government policies that regulate the movement of work and workers across national borders have become increasingly important. Box 10.1 describes a recent suit against Disney alleging that Disney illegally replaced U.S. workers with immigrant workers supplied by an outsourcing company.

Debates Surrounding the Impact of Government Policies

There has been extensive debate among economists about the long-term impacts of government regulations and policies on labor market outcomes. Neo-classical (or so-called free market) economists believe that market and competitive pressures generally dominate the economy. They argue that government regulations and policies, while well intentioned, in fact lead to a worsening of work conditions. Others sharply disagree, pointing out that there are many rigidities in the labor market and that government can play a significant role in determining outcomes. One of the most important and controversial government policies is the minimum wage. Some argue that the minimum wage appropriately helps many workers achieve living wages, while others claim that the minimum wage leads to lower levels of employment (see Box 10.2).

UNION EFFECTS ON WAGE ADMINISTRATION

A key aspect of **wage administration** is that union contracts tend to link worker wages to specific jobs rather than to the characteristics of the worker. Thus, while seniority is a strong guiding principle for worker transfers and other worker rights, it does not typically directly influence the wages of workers in the United States. The importance of job characteristics as a determinant of wages is one reason why the U.S. labor movement has been labeled **job control unionism**.

Over the years, in addition to increasing wages, collective bargaining has introduced some innovations in the system of wage administration. Chief among these have been **cost-of-living adjustments**, deferred wage increases (sometimes referred to as **annual improvement factors**), **red circle wage rates** (stipulations that provide for rate retention for employees whose jobs are evaluated downward

BOX 10.1

Lawsuit by U.S. Workers Claims that Disney Illegally Replaced Them with Immigrants

A class action suit filed on January 25, 2016, claimed that Walt Disney World in Bay Lake, Florida, and an outsourcing company had fired several hundred U.S. information technology workers and replaced them with foreign workers who were in the United States on H-1B visas. The complaint stated that Disney told its workers that they were going to be terminated but that they would have to train their H-1B replacements in order to receive a bonus and severance pay. Allegedly Disney told the workers that there were other job openings for them, but only a few were rehired.

Congress designed H-1B visas to bring foreign workers with special skills into the United States. The current annual quota of H-1B visas that Congress has set is 85,000. Employers are required to declare that the hiring of foreigners "will not adversely affect the working conditions of U.S. workers similarly employed." In this case, the technology, accounting, and administration foreign workers were primarily from India. The U.S. Department of Labor began an investigation of the use of temporary immigrant workers at Disney in 2014 that continues while the class action proceeds through the courts.

The Institute of Electrical and Electronics Engineers, an international association of technical workers, posted a petition online encouraging U.S. displaced workers to file complaints with the U.S. Department of Justice.

Source: Laura Francis, "Disney, Cognizant Accused of Conspiracy to Replace Americans," *Daily Labor Report*, January 26, 2016, A-2; and Julia Preston, "Lawsuits Claim Disney Colluded to Replace U.S. Workers with Immigrants," *New York Times*, January 26, 2016, https://www.nytimes.com/2016/01/26/us/lawsuit-claims-disney-colluded-to-replace-us-workers-with-immigrants.html.

because of technological change), and **wage reopener** provisions (whereby the contract remains in force over several years but wages are renegotiated at some specified point during the life of the agreement).

In some industries, such as steel, the union and the employers have jointly developed complex systems for evaluating jobs and establishing a more rational structure of wage rates. In many settings, the current trend is to consolidate jobs and reduce the number of wage classifications in order to increase flexibility, increase training, and pay for skills workers have instead of for the specific job to which they are assigned on a given day. These changes require adjustments in collective bargaining contracts and a considerable ongoing effort on the part of both union and management to implement and fine-tune these new plans during the term of an agreement.

In the apparel industry, unions and the employers negotiated and administered complicated **wage incentive systems.** Apparel-industry unions from the 1920s

BOX 10.2
The Debate over the Minimum Wage

Congress has set a national minimum wage $7.25 per hour, and several states and cities have minimum wages. The national minimum wage is not tied to inflation or to any measure of worker productivity and over the last twenty-five years has declined substantially in real terms. The national minimum wage does not cover all workers; it excludes supervisors, public employees, domestic workers, and workers in the agricultural sector. Because of these exclusions and shifts in the structure of the U.S. economy, the number of workers the national minimum wage covers has declined substantially.

Proponents of the minimum wage argue that it counteracts the power imbalance that commonly favors employers in the labor market and is particularly helpful to low-skilled workers. Critics of the minimum wage claim that it introduces a distortion into the labor market and in leads to lower employment, especially of low-skilled workers.

Extensive economic analysis has been conducted on the effects of the minimum wage. Perhaps surprisingly, much of that research finds that the minimum wage does not lead to significant declines in employment and in some circumstances may actually lead to an increase in employment.

There is also much controversy regarding whether tips should be counted as wage income and if so, exactly how to do so (for waiters, for example).

Sources: David E. Card and Alan B. Krueger, *Myth and Measurement: The New Economics of the Minimum Wage* (Princeton: Princeton University Press, 1997); and Saul D. Hoffman, "Are the Effects of Minimum Wage Increases Always Small? A Reanalysis of Sabia, Burkhauser, and Hansen," *ILR Review* 69 (March 2016): 295–311.

on have provided technical advice to employers on how to structure jobs and set incentive rates.[16] In recent years, the pressure to respond to the combination of international competition for low-priced clothing and the need for retailers to replenish stock rapidly has led clothing unions and some employers to move from incentives based on individual jobs to team-based work systems (called **modular production** in clothing).[17]

UNION EFFECTS ON FRINGE BENEFITS

In general, unionized workers receive both a wider variety and a higher level of fringe benefits than nonunion workers, for a variety of reasons.[18] Unions have focused on fringe benefits for many decades.

During World War II, the War Labor Board first sanctioned and then actively encouraged bargaining over fringe benefits as a means of holding down the size of basic wage increases. Since then, unions have fought to broaden the scope of

fringe benefits that are included among the **mandatory scope of bargaining**. In the 1948 Inland Steel case, the NLRB ruled that pension and retirement issues belonged on the mandatory list of subjects.[19] By the late 1950s, the board had added issues such as health insurance, sick leave, supplementary unemployment benefits, vacations, and holidays to the list, and since then these have become standard provisions in almost all collective bargaining agreements.

The Sources of Unions' Demands for Fringe Benefits

Union demands for improvements in fringe benefits derive from several factors. For one thing, union membership typically includes a disproportionately high number of older workers and workers with longer tenure who are likely to place a particularly high priority on pensions and life insurance benefits. In addition, the preferences of these older union members are likely to carry much weight in union decision making because older union members tend to have greater political influence in unions.

Union concern for certain fringe benefits is also a consequence of the fact that unionized employees have low voluntary turnover (i.e., low quit rates). Since union members are likely to stay on their jobs for a longer time than nonunion workers are, they gain more from deferred benefits such as pension plans, vacation pay tied to seniority, early retirement, and disability retirement pay.

Employees commonly seek to receive a larger share of their income in the form of fringe benefits as their income increases. Some fringe benefits carry tax advantages. For example, employees pay no income taxes on deferred benefits until they receive the benefits (if received as income, as in the case of a pension), and they never pay tax on some benefits (such as medical care). Thus, workers will value an additional dollar in fringe benefits more highly than a dollar increase in wages.

Trends in Fringe Benefit Provisions

Research shows that unionized workers on average receive a broader range of fringe benefits than nonunion employees and receive a greater percentage of their total compensation in the form of fringe benefits than nonunion employees.[20]

The vast majority of unionized workers receives a comprehensive package of fringe benefits. For example, health insurance benefits are an integral part of nearly all collective bargaining contracts. Nearly all current labor contracts provide insurance coverage for hospital visits (99 percent), doctor visits (96 percent) and prescription drugs (96 percent).[21]

Evidence indicates that the new jobs being created in the United States since the 2008 financial crisis are less likely to provide health insurance and pension coverage than existing jobs. This is particularly true for jobs for less-educated and lower-wage earners. While we cannot determine from the data available how much of this decline in coverage is due to the lack of union coverage in most of these new jobs, it undoubtedly is part of the explanation.

Within the unionized sector, employers have pressured unions in recent years to pay a higher share of health insurance costs. Surveys consistently show that this has been one of the top bargaining objectives of management in recent

years. Many companies and unions have negotiated changes in their plans to encourage or require workers to use health maintenance organizations (HMOs) instead of individual doctors who are unaffiliated with an HMO and to shift more of the costs of health insurance to workers by increasing deductibles or adding various types of copayment arrangements to existing plans. Some unions and companies have set up joint committees to explore ways to reduce the costs of health insurance without lowering benefits. Even in the face of these benefit cutbacks, union workers continue to receive more fringe benefits on average than nonunion workers do.

UNION EFFECTS ON WORK RULES

Union effects extend beyond compensation. Many work rules affect matters such as the pace and difficulty of work. These issues are of concern to unionized employees and, consequently, to unions. Below we review how unions generally influence some of the key work rules.

Protection from Arbitrary Treatment

Perhaps one of the most important effects of unions has been the protections they have secured for their members from arbitrary discipline, discharge, or denial of benefits. Unions pioneered the development of the principle of just cause for dismissal or discipline. Unions also developed the grievance procedures for adjudicating disputes over actions that violate the just-cause principle or some other term of the labor agreement. The installation of this system of industrial jurisprudence is often cited as one of the most distinct achievements of the U.S. collective bargaining system.

How does the union system of jurisprudence compare with practices in the nonunion sector? Although the number of nonunion grievance procedures has swelled in recent years, most of them do not provide for binding arbitration by a neutral party.

Nonunion employees also receive some protection from statutory legal protections, although in most states (since state laws apply in the absence of federal law) these protections are limited. The primary statutory protections available to workers who are dismissed, denied benefits, or denied promotions are those that prohibit such actions on the basis of discrimination by race, gender, age, religion, disability, or support for union activity.

Seniority Rights

Seniority plays a pivotal role in collective bargaining agreements, and the elaboration of seniority rights is another important effect unions have on employment conditions. Seniority rights are important to employees because they are used as a basis for allocating benefits and job opportunities to workers. They are important to employers because they restrict the discretion they have in carrying out their personnel functions. And seniority is important to public officials as they administer equal employment opportunity labor policies.

Seniority is normally defined as an employee's length of service with the employer. In some cases and for some purposes, it may be measured as the length of service in a particular department, job, or other subunit of the company. Benefit-status and competitive-status provisions are two types of seniority provisions that are commonly negotiated in collective bargaining agreements. Benefit-status provisions tie increases in various economic benefits, such as vacations, pensions, supplementary unemployment pay, severance pay, and guaranteed annual wages, to the length of service with the employer. Competitive-status provisions make seniority a factor in personnel decisions, such as promotions, job assignments, layoffs, and transfers.

Seniority also plays a role in grievance arbitration. Most arbitrators will take the grievant's length of service into account when considering whether any disciplinary action taken against the worker was equitable, especially when the employee's previous personnel record is good.

As unionism developed in the United States, seniority emerged as an important bargaining goal of most unions because members viewed it as a means of curbing arbitrary treatment or favoritism in personnel decisions. Unions also came to support the notion that employees gain a property right to their jobs as their length of service increases. Accordingly, unions argued that employees with the longest service should be entitled to the most secure jobs, have the first opportunity to bid for better jobs as they become available, and be accorded some deference in scheduling vacations and accruing other benefits.

The Pros and Cons of Seniority Provisions

Seniority provisions protect the security of the incomes and jobs of high-seniority employees by reducing the threat of layoff and by increasing the chances of bumping (displacing a newer employee when a layoff occurs). Seniority provisions also play an important role in shaping the career prospects of workers.

Both the scope of the seniority unit and the weight assigned to seniority in promotions affect the range of possible paths for upward mobility and the probability that an individual worker will obtain a promotion. In combination, the scope of the seniority unit and the weight given to seniority determine the time an employee can expect it will take for him or her to move up in the company.

However, strong seniority provisions improve the promotion chances of workers who have average to below-average ability and motivation. These provisions may slow the career advancement of younger employees who have higher-than-average ability and motivation. Thus, seniority does not necessarily benefit all employees equally.

Seniority provisions offer employers both advantages and disadvantages. By increasing the economic and job security of workers as their tenure increases, seniority provisions should help stabilize the work force and reduce the number of valued workers who leave the firm. They also may reduce psychological stress and increase older workers' satisfaction with their jobs. In addition, where experience

contributes to improved job performance, the use of seniority should help keep the most productive workers in the company.

Seniority provisions reduce uncertainty about the ongoing makeup of the work force for both employees and employers. Because of this, employers can design jobs and training programs to ensure that job performance improves with length of service. This simplifies the personnel function because seniority provisions will then allow the employer to compute the probable movement of individual workers through different jobs in the company over time.

All these benefits are greatest to firms that have relatively routine and unchanging technologies for which individual worker differences have little effect on job performance. The more variable the technology and skill requirements, the greater the costs associated with strict adherence to seniority. In cases where technology and skill are variable, employers will seek to limit both the scope of the seniority unit and the weight assigned to seniority in promotion decisions.

Strict adherence to seniority would entail large costs when jobs require great technical, professional, or artistic skill. It is hard to imagine, for example, seniority ever playing an important role in determining the starting lineup of a professional baseball team or the cast for a major motion picture.

The Importance of Seniority

This brief overview of the role of seniority provisions vividly illustrates why some see them as the heart of a collective bargaining agreement. Clearly, seniority provisions are among the most complex to negotiate and to modify as conditions change. The variations in the nature and strength of seniority provisions in union contracts attest to the ability of collective bargaining to fit a general principle to the specific circumstances of each bargaining pair.

JOB AND INCOME SECURITY

In addition to its inherent importance to all workers, job security is of special concern to union members because of how management adjusts to unions' primary effects. As unions increase wages and other labor costs, they give employers reasons to make compensatory adjustments in employment conditions that reduce employees' job security. An increase in labor costs, for example, may lead a company to substitute technology for labor or reduce the volume of production. Unions commonly respond to these adjustments by attempting to negotiate job and income security provisions that provide some protection from these adjustments or at least set rules about how such adjustments will be made (e.g., seniority rules regarding who gets laid off first if layoffs occur or limitations on management's right to contract out work).

Some security provisions make it more difficult or costly for the employer to substitute nonunion labor or capital inputs for union work covered under the contract. The union may also try to negotiate additional paid time off to reduce employment losses.

Employers frequently oppose demands for job and income security provisions because they increase their labor costs and reduce their ability to make adjustments to labor costs when business conditions fluctuate.

The comprehensiveness of the job and income security protections unionized workers achieve is a function of the bargaining power of the union. Bargaining over these issues is an example of the classic conflict between the desire of workers for security and the desire of employers for autonomy and flexibility.

Job Preservation

Some job security provisions are geared toward preserving jobs. One way unions try to preserve jobs is by negotiating work-sharing provisions that reduce the length of the work week during periods of slack demand instead of allowing employers to lay off workers.

One major disincentive to **work sharing** is that **unemployment benefits** in most states do not cover workers on a shortened work week. In most states, a complete layoff is necessary for workers to be eligible for unemployment benefits, although a few states have experimented with providing unemployment compensation to workers whose hours have been reduced. Most contractual work-sharing agreements limit the time that this alternative can be used to forestall layoffs. Most also limit the number of hours that will be reduced before layoffs begin.

Other types of work rule provisions that are geared to preserving jobs are restrictions on the right of supervisors to do bargaining-unit work, restrictions on employee transfers and how vacancies are filled, restrictions on the ratio of apprentices to journeymen, restrictions on management's right to change the pace of work, and restrictions the extent to which an employer can subcontract work. Unions desire many of these provisions because they contribute to increased safety, in addition to their effects on job preservation. Management sometimes complains that these procedures require them to retain more workers than are needed to perform the work, also known as featherbedding.

Income Security during Temporary Layoffs

When sales decline, firms commonly try to reduce employment levels quickly. This leads to layoffs that are temporary if the laid-off workers are recalled when business improves. Temporary layoffs are a common occurrence in industries that produce durable goods such as automobiles or household appliances.

In the face of their experience with frequent layoffs in the 1950s, unions in the United States developed several contractual provisions that address short-term layoffs. Many of these provisions provide income security rather than employment security.

The two major forms of income protection against short-term fluctuations in the demand for work are **supplementary unemployment benefit (SUB)** plans and guaranteed annual wage plans. The first major SUB plan to be negotiated was in the auto industry in 1955.[22] The United Auto Workers had originally sought a form of guaranteed annual income. Ford Motor Company, the target

firm in that round of negotiations, countered with what has grown into the industry's SUB plan. The pattern set in the auto industry spread quickly.

Programs in Response to Permanent Job Loss

Not all workers are recalled after they have been laid off. As a result, another important set of collective bargaining clauses deals with permanent job loss caused by technological change or a plant shutdown. Here the provisions address both job preservation and income protection. They include the right to transfer across plants or the right to transfer to other jobs in a plant or a company; early notice of technological change, a plant shutdown, or both; and relocation allowances.

In the face of the substantial layoffs that occurred in many nonunion and unionized workplaces in the 1980s, Congress passed the Worker Adjustment and Retraining Notification Act (WARN Act), which took effect in February 1989. This law requires employers to provide advance notice to employees who will be affected by a plant closing. Employers with 100 or more employees must give sixty days' advance notice of plant shutdowns when they affect at least fifty workers at an employment site. In addition, the law contains a mass layoff provision that requires employers to give advance notice in the case of layoffs that last more than six months and that affect fifty or more employees, 33 percent or more of the work force at a site, or more than 500 workers for any time frame.

Employment Security Initiatives

A number of collective bargaining agreements in recent years have provided increased employment security through a variety of mechanisms, such as lifetime job guarantees to workers on the payroll as of a specified date.

Agreements in the auto industry and other industries have increased the incentives for older workers to retire or quit. The companies hope that attrition will prevent the need to lay off workers and thereby avoid the high costs to the company for such layoffs imposed by clauses in their labor agreements.

One of the most hotly contested employment security issues since the 2008 financial crisis involves the contracting out of work done by union members, or outsourcing, as it is now commonly called. Outsourcing has become prevalent for three reasons: (1) the increased in the number of nonunion firms capable of doing many of the tasks unionized workers perform, especially unionized workers in manufacturing firms; (2) the popularity of reengineering the processes that dominate much of the thinking and actions of management; and (3) the general trend toward downsizing and the desire of many firms to focus on only the core activities that give the firm a distinct competitive advantage. Together or separately, these three developments have led to considerable bargaining activity and in some cases considerable conflict.

Yet, at some firms, unions and management have been able to develop creative approaches that limit outsourcing and retain work in existing operations. Box 10.3 describes how labor and management worked to retain jobs at one company.

The development of new work structures geared toward giving employers greater flexibility in how they use their work force has also spurred interest in

BOX 10.3
A Joint Approach to Subcontracting Decision Making

The Company shall conduct ongoing cost analyses of work produced by the Bargaining unit. . . . When the Company determines, through such analyses, that work of satisfactory quality cannot be produced cost competitively by the Bargaining Unit, the Company Shall:

Notify the union accordingly and share the results of such analyses. . . .
Establish, in conjunction with the Union, appropriate Employee Involvement Study Teams. . . .

An appropriate Employee Involvement Study Team shall:

Review the relevant cost comparison analyses.
Investigate alternative production methods, processes, equipment, materials, and any other factors which affect internal production costs.
Advise the Company and the Union that the Team is unable to formulate proposals which will render the production cost-competitive with external sources.
Recommend to the Company and the Union those methods, processes, and changes in the terms and conditions of employment and capital investments, which could render the production studied competitive with the costs of obtaining such work from external sources.

When the Company and the Union agree that the Team's recommendations will make the production studied cost-competitive with external sources, the Company and the Union shall have the authority to negotiate, within a reasonable period of time, an agreement that effectuates such recommendations.

Source: Xerox Corporation and the Union of Needletrades, Industrial, and Textile Employees 1994–2001 Collective Bargaining Agreement, p. 4.

employment security. Traditionally, unionized plants used job classifications that matched occupations found within the labor market. This decreased the difficulties associated with layoffs because it was relatively easy for workers to find alternative employment; their skills were transferable. But as firms pushed for more firm-specific training, workers sought assurances of employment continuity. Without such assurances, they feared that their specialized training would make them ill equipped for jobs elsewhere.

Employment security programs also became attractive to employers since the early 1980s because the teamwork systems they were introducing in many settings were particularly effective when employees were highly trained and committed to their work. Both of those attributes can be encouraged by enhancing workers' employment security.

MANAGEMENT'S RESPONSE TO WORK RULES

The work rules provided in traditional labor contracts, grievance procedures, seniority rights, and job security all limit the amount of discretion management has at the workplace. In response, management has typically taken a number of actions to increase its discretion over work rules.

Management Rights Clauses

One conventional strategy management uses to limit the effects of restrictive work rules is to negotiate a **management rights** clause. Some management rights statements are simple, general statements such as, "The supervision, management, and control of the company's business, operations, and plants are exclusively the function of this company." Most such provisions, however, enumerated a specific list of rights reserved to management, as in the following example:

> The rights to hire, promote, discharge or discipline for cause, and maintain the discipline and efficiency of employees are the sole responsibility of the corporation except that union members shall not be discriminated against as such. In addition, the products to be manufactured, the location of plants, the schedules of production, and the methods, processes, and means of manufacturing are solely and exclusively the responsibility of the corporation.

The obvious purpose of a management rights clause is to limit the territory of union influence and retain for management the freedom to run the company. Labor relations literature has articulated two views of the management rights concept; arbitrators and the courts use these opinions in resolving disputes over contract interpretation. The reserved, or residual, rights doctrine takes the view that management retains all rights not covered by a specific clause in a contract. In contrast, the **implied obligations doctrine** assumes that the union recognition clause requires management to negotiate changes in terms and conditions of employment even in the absence of an express contract provision that covers the issue involved.

The Residual Rights Doctrine

The **residual rights doctrine** has been most popular among management. Those who support this view argue that it derives logically from the property rights stockholders (or the public, in a government organization) delegate to management. The supporters claim that neither union members nor their representatives are directly accountable to stockholders. This view holds that unions should not have a right to infringe on the ability of management to act on the owners' behalf, except for issues that management has agreed to share its authority over by way of specific contract language.

The Implied Obligations Doctrine

The residual rights doctrine has been challenged by labor relations scholars and arbitrators who support the implied obligations doctrine. This position is worth

examining because some courts have used it as a rationale for limiting a firm's freedom to hire and fire at will.

ALTERNATIVE WORK SYSTEM: FROM WORK RULES TO TEAMWORK

In recent years, one-time agreements by unions to change specific work rules in exchange for specific wage increases largely gave way to more comprehensive efforts to restructure work to increase flexibility, teamwork, and continuous improvement in quality. These efforts are more attributable to a sea change in employers' thinking about work systems and human resource management than they are to isolated efforts to change specific work rules. We will discuss these new systems and the forms of employee participation embedded in them in more detail in Chapter 11. However, it is useful to point out here how team-based work systems and their associated contract provisions differ from the more conventional work rules that flow from a job control model of union–management relations. It is also useful to examine briefly the stakes involved in the choice between these two systems.

The detailed work rules covering job classifications, individual pay and/or incentive rates, promotion criteria, **transfer rights**, layoff procedures, and so on all are interrelated parts of the job control union-management system of industrial relations that developed in the United States after the rise of mass production and after the New Deal collective bargaining system was institutionalized. Together, these provisions and rules produced the uniformity, equitable treatment, clarity over rights and obligations, and stability that both management and labor needed to overcome the arbitrary and often inconsistent treatment workers experienced prior to unionization. In return for the specific rights that workers negotiated and wrote into collective bargaining agreements, management retained broad authority to manage company operations. These rights were protected by management rights clauses. In the post–World War II period, unions and companies modified these provisions incrementally each time they renegotiated a contract to take account of changing conditions, new technologies, and so on. Over time, contracts became more lengthy and complex as new provisions about wages, fringe benefits, and work rules were added.

One finding from research is that changing one or two work practices does not have much effect on a company's performance. Instead, the big effects are observed when the complete system of flexible job assignments, teamwork, training, and related human resource practices is implemented. This type of comprehensive change is difficult to achieve in a workplace that has built up traditional practices over a long period. Both workers and managers have equity stakes in preserving some of the existing practices. Thus, contemporary work settings exhibit two features. Labor and management are engaged in continuous negotiations and experiments that seek ways to adapt some or all of these new practices in existing plants and work sites, often with mixed results. On the other hand, when a new plant or work site is opened, often management—and, if given the opportunity,

labor and management—will implement these flexible team systems from the outset. Thus, we are likely to continue to see struggles to adapt new work systems in existing facilities for years to come and a gradual expansion of their coverage as new facilities come on line.

SAFETY AND HEALTH

Another important job outcome influenced by collective bargaining is the health and safety of the work force. Unions historically have used three interrelated strategies to improve safety and health conditions at the workplace: (1) supporting government regulations that mandate or encourage safe practices; (2) negotiating safety provisions into bargaining agreements; and (3) encouraging the formation of joint union-management safety and health committees at the plant level. The labor movement, for example, was the driving force behind passage of the Occupational Safety and Health Act of 1970. The number of safety provisions in bargaining agreements has increased considerably since then, as has the number of safety and health committees in unionized plants.

Unions can affect safety and health at the workplace in two ways. First, they can demand higher compensation for workers who are exposed to higher risks. Although the evidence is far from conclusive, there is some indication that unions have been successful in obtaining a positive wage differential for risky jobs. This differential has both a direct effect and an indirect effect. The direct effect is that the wage differential obviously compensates workers who are exposed to risks. The indirect effect is that employers have a greater incentive to lower the risks on the job to avoid having to pay a compensating differential.

Second, unions can negotiate for protections against job hazards, increased training for workers and supervisors, and changes in the work environment that will eliminate the hazards. Whether these strategies are effective depends heavily on whether the parties have accurate information about the causes of injuries and occupational illnesses.

Unions also frequently negotiate general contractual provisions stating that the employer is responsible for making the work environment safe or that the employer agrees to comply with applicable safety laws (something employers must do whether the union contract requires it or not). This sort of language allows the union to use the contractual grievance procedure to process safety complaints. The alternative is for the union to rely solely on either a joint union-management committee or bring complaints to the Occupational Safety and Health Administration, which is responsible for administering and enforcing the Occupational Safety and Health Act.

Summary

The presence of a union sets off a series of chain reactions in a wide range of employment outcomes that affect employees and employers. This chapter presents a framework for tracing the effects that unions exert on employment terms.

Estimates of the "average" effects of collective bargaining must be interpreted with caution because there is much variation across and within union and nonunion workplaces.

The average effects of unions measured by research are as follows.

1. Unions raise the wages of their members higher than those of comparable nonunion workers. The magnitude of this effect varies considerably over time and across occupations. The average wage effect is between 15 and 20 percent and is somewhat higher for nonwhites than for whites, for younger and older workers than for workers in their prime working years, and for blue-collar than white-collar workers.
2. A fundamental shift in the nature of wage setting in collective bargaining appears to have taken place since 1990 that makes settlements more responsive to market forces. The bargaining power of unions is considerably weakened in this environment. The cumulative effects of these trends contribute to a decline in real wages, increased income inequality, and a lower risk of inflation in response to lower unemployment.
3. Unions increase the range of fringe benefits available to workers and the level of benefits workers receive. Some of this effect is due to the built-in relationship between wages and fringe benefits that are tied to the wage rate, while some is due to the direct effect that unions have on benefits. Pressure from management to reduce benefit costs have shifted some of the costs to workers and have produced significant overall savings in the cost of benefits, some of which have been achieved through joint union-management efforts.
4. Unions have negotiated a wide range of job security provisions. The most prominent union effect on job security is the protection unions provide against arbitrary discharge or discipline members through the grievance arbitration provisions in most private sector labor agreements. Unions have also increased the security of long-service employees through the seniority provisions in labor contracts. A minority of unions have been successful in negotiating income security provisions that supplement the state unemployment compensation system during short, temporary layoffs.

   A smaller minority of unions have negotiated provisions that protect the income and job security of employees who are affected by permanent job loss resulting from technological change, outsourcing, or corporate restructuring. Again, the magnitude of these protections and benefits typically is a direct function of the worker's seniority. Some bargaining agreements since 1990 have provided increased employment security in association with pay concessions or work reorganization.
5. Unions reduce turnover, primarily by increasing the value of the jobs union members have compared to the value of alternative jobs. This effect increases directly with the seniority of the worker.
6. The average effect of unions from 1950 to 1990, after management made adjustments to increased compensation costs, was to increase productivity.

> Since 1990, however, the development of more flexible, team-based work systems has led to pressure to introduce major changes in the traditional job control model of labor relations. Where the full complement of team-based work systems is implemented, significant improvements in quality, productivity, and profitability have been realized. In the foreseeable future, there will continue to be considerable variability in work practices and work systems in American industry as union leaders and managers adapt to globalization and intensified economic pressures.

There is much debate about the long-term impacts of unions and government regulations on labor market outcomes. Research since 1990 reveals much variation across countries, industries, and firms, so claims or estimates of "average" effects must be interpreted with caution.

Workers, employers, governments, NGOs, and the broader society care about more than wages and economic growth. Workers, for example, also care about whether and how seniority rights influence their access to jobs. All parties should also care about worker safety and other workplace outcomes.

Discussion Questions

1. Described some of the short-term and long-term adjustments management commonly makes in response to a wage increase.
2. Unions have argued that seniority protects against arbitrary treatment by the employer and promotes fairness. Employers, on the other hand, often argue that adherence to seniority leads to inefficient practices and restricts their ability to promote high-achieving individuals. Which side in this debate do you favor and why?
3. Explain how outsourcing can threaten employment security and suggest ways that worker interests in employment security can be reconciled with management's interests in maintaining flexibility and high performance at the workplace.
4. How do team-based work systems and their associated contract provisions differ from the more conventional work rules that flow from a job control model of union-management relations?

Related Web Sites

Bloomberg BNA:
https://www.bna.com/

Occupational Safety and Health Administration (OSHA):
http://www.osha.gov

WARN Act
https://www.doleta.gov/programs/factsht/warn.htm

Suggested Supplemental Readings

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Notes

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4. H. Gregg Lewis, *Unionism and Relative Wages in the United States* (Chicago: University of Chicago Press, 1962).

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6. Orley Ashenfelter, "Racial Discrimination and Trade Unionism," *Journal of Political Economy* 80 (May/June 1972): 435–464.

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8. Farrell E. Bloch and Mark S. Kuskin, "Wage Determination in the Union and Nonunion Sectors," *Industrial and Labor Relations Review* 31 (January 1978): 183–192.

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11. James A. Dalton and E. J. Ford Jr., "Concentration and Labor Earnings in Manufacturing and Utilities," *Industrial and Labor Relations Review* 31 (October 1977): 45–60.

12. Lawrence Mishel, "Unions, Inequality and Faltering Middle-Class Wages," Economic Policy Institute Issue Brief 342, August 2012, Washington, D.C.

13. See Lewis, *Unionism and Relative Wages in the United States*; and Freeman and Medoff, *What Do Unions Do*?

14. See, for example, Greg Duncan and Frank Stafford, "Do Union Members Receive Compensating Wage Differentials?" *American Economic Review* 70 (June 1980): 355–371; and John Abowd and Henry S. Farber, "Job Queues and the Union Status of Workers," *Industrial and Labor Relations Review* 35, no. 3 (1982): 354–367.

15. Dallas L. Salisbury and Marc Robinson, *Managing Money in Retirement* (New York: Dorling Kindersley, 2001).

16. Mitchell Lokiec, *Productivity and Incentives* (Columbia, S.C.: Bobbin Publishing, 1977).

17. See John T. Dunlop and David Weil, "Diffusion and Performance of Modular Production in the U.S. Apparel Industry," *Industrial Relations* 35 (July 1996): 356–373.

18. The theoretical arguments and empirical evidence here draw heavily from Freeman and Medoff, *What Do Unions Do?* 61–77.

19. *Inland Steel Co. v. NLRB*, 170 F. 2d 247 (1948).

20. See Freeman and Medoff, *What Do Unions Do?* 61–77.

21. See "Study Sees Health Care Costs Becoming Largest Portion of Employer Benefit Costs," *Daily Labor Report*, January 3, 2006, A-8.

22. For a good description and analysis of SUB plans, see Audrey Freedman, *Security Bargains Reconsidered: SUB, Severance Pay, Guaranteed Work* (New York: Conference Board, 1978).

PART IV

The Workplace Level of Labor Relations

11. Workplace Labor Relations
12. Conflict Resolution at the Workplace

11 Workplace Labor Relations

THE IMPORTANT ROLE OF THE WORKPLACE

This chapter moves to the lowest level in our three-tier model from Figure 1.1 and examines labor relations at the workplace level. It focuses on the day-to-day employment relationship, which includes management of employees in the workplace, employee participation in decision-making, and administration of the labor contract below the level of formal contract negotiations in unionized settings.

Managing the workplace involves questions of how work is organized and what rules govern employee behavior. From the 1970s onward, competitive pressures spurred different approaches to work organization and employee involvement in decision-making. Although many workplaces still rely on the unilateral authority of management and simplified, standardized work organization, others have adopted more flexible forms of work organization that include greater employee participation.

When conflicts arise in the workplace, it is important to have some mechanism for resolving them. Companies vary widely in the procedures they use for and the approaches they take to conflict management. Different countries have distinctive national systems for conflict resolution that vary in their impacts on the workplace.

How these elements of workplace labor relations function affects both company performance and the attitudes, behaviors, and work experiences of individual employees. Thus, this chapter examines how these elements operate and combine to affect workplace labor relations.

A MODEL OF THE WORKPLACE LABOR RELATIONS SYSTEM

The three basic functions of any workplace labor relations system are to organize work and implement workplace rules, to resolve conflicts and provide due process, and to develop the work attitudes and behaviors of individual employees. Figure 11.1 sketches the interrelationships among these three functions of workplace

Figure 11.1. A model of the workplace labor relations system

labor relations and their effects on the performance of the firm and the fulfillment of workers' goals.

One of the basic premises of labor relations systems theory is the recognition that elements of the workplace interact with each other. Understanding how work is organized and what rules govern work are an important starting point for understanding how the workplace is managed. But workers may contest the decisions that managers make in the workplace or feel that the rules are being applied to them unfairly. Managing and resolving such conflicts is critical to ensuring the effective operation of the workplace. The degree to which workers feel they are treated fairly and accorded due process also shapes their attitudes about their job, which in turn influences how motivated they are to do work and how they behave in the workplace. A well-functioning workplace labor relations system can improve both company performance and the quality of the work experience for employees.

WORK ORGANIZATION AND PARTICIPATIVE PROCESSES

How work is organized on the shop floor shapes workplace labor relations and is critical to company performance. Over time, approaches to the organization of work have evolved from simplistic approaches that involved driving workers to exert greater effort to more scientific approaches that sought to manage the production process to maximize production and to involving employees in decision-making to increase workplace flexibility and improve the quality of production. Although this evolution of approaches to work organization emphasizes more participative process, there continues to be great variation in the practices companies use. Many companies, particularly in transitioning countries, continue to use older, more directive approaches to managing the workplace. In this section, we describe a range of common approaches to work organization.

The Drive System

As discussed in Chapter 2, in the early years of industrialization, employers initially gave substantial power to line foremen under the **drive system** of management.[1] Hiring, firing, and general supervision of labor were all controlled by these foremen. Although use of the drive system declined by the middle of the twentieth century, it did not entirely disappear. Even today we see versions of this emphasis on managerial authority and discretion in many small businesses.

The drive system of management continues to be a common approach in workplaces that follow the paternalistic labor relations pattern we described in Chapter 5. Where organizations lack professional managers and formal structures for directing the firm, companies tend to rely on lower-level managers and supervisors, who use their own discretion and authority in organizing and directing the work force. This system is also still commonly found in transitioning countries.

Scientific Management

The first important step toward establishing a professional personnel management function was the introduction of **scientific management.** Although the ideas behind the scientific management movement can be traced as far back as the mid-1800s, Frederick Taylor's promotion of this movement in the first two decades of the twentieth century was critical. Scientific management blended economic incentives and industrial engineering techniques to produce the "one best way" of organizing a work process. Those who embraced Taylorism in the workplace assumed that tying the individual worker's wages to output could bring the interests of the worker—economic rewards—and the interests of the firm—productivity—into compatibility.

Box 11.1 describes how scientific management principles were used on Henry Ford's assembly line. Management's function was to design the jobs and to supervise and compensate the work force to eliminate conflicts of interest between workers and the employer. Some companies used industrial engineering principles (such as time-and-motion studies) and incentive wages to this end.

BOX 11.1
Scientific Management in the Auto Industry

Production efficiency in the final assembly of cars rose, but the soaring demand for Ford's Model T, introduced in 1908, rose even faster. Ford still had to rely on skilled mechanics to perform the complicated tasks in the Piquette plant—such as filing and fitting together the parts for transmissions and engines. These workers were not protected by union work rules, but their monopoly of mechanical skills and their crucial role in the production process enabled them to work at their own pace. Even the less-skilled assembly workers had some control over their work pace. As they pushed their bins from car to car, they could slow down to rest or to speak a word

with their workmates. Beyond a certain point, supervisors simply could not force the men to adopt a faster gait or completely abandon their occasional socializing.

To gain greater control over the production process, Ford began to lay plans for a new plant in the rural village of Highland Park. It would be, he announced, the biggest automobile plant in the world, employing new production methods that would revolutionize the auto industry.

Ford was not alone in seeking ways to spur production and lower labor costs. Factory owners had been mechanizing and deskilling certain kinds of production for many years, but after 1900, the nation's larger corporations attempted to do so on a broader, more systematic basis. The principles of this new "scientific management" were most vigorously espoused by Frederick Taylor, a former steel mill supervisor who became, after 1903, the nation's leading consultant on "productivity"—or worker output.

Like Ford, Taylor complained that in most workplaces—whether union or nonunion—"The shop [is] really run by the workmen and not by the bosses. The workmen together carefully plan . . . just how fast each job should be done." Taylor's solution was simple: "All possible brainwork should be removed from the shop and centered in the planning or laying-out department." Management, in short, should redesign every job and divide it into dozens of simple, repetitive tasks performed by unskilled laborers or semi-skilled machine tenders. Skilled workers with their relatively high pay would no longer have to be tolerated in such large numbers. With deskilling, most craftsmen would be replaced, in Taylor's words, "by men of smaller attainments, who are therefore cheaper than those required under the old system."

When Taylor came to Detroit in 1909 and spoke to executives at Packard, Henry Ford was already planning to make his new Highland Park plant (dubbed the "Crystal Palace" because of its many windows) a model of "scientific management." Between 1910 and 1913, he put his ideas into practice by standardizing parts production and developing the auto industry's first moving assembly line. Where before entire engines had been built by a single mechanic with a few helpers, now the engine blocks were pulled past a line of over 100 workers. Each worker performed a specialized task as the engine (or its parts) moved past: one would ream bearings, one every seven seconds, all day long; the next would file bearings, one every 14 seconds, all day long; and the next would put bearings on camshafts, one every 10 seconds, all day long.

H. L. Arnold, writing of Ford in 1916, concluded that the company "desires and prefers machine operators who have nothing to unlearn, who have no theories of correct surface speeds for metal finishing, and who will do what they are told, over and over again, from bell-time to bell-time.

Source: Excerpt from Steve Babson, *Working Detroit* (New York: Adams Books, 1984), 29–31.

Scientific management directly contradicted the beliefs of those who advocated collective bargaining. Instead of seeing conflicts of interest as an inherent part of the employment relationship, advocates of scientific management argued that appropriate task designs and wage systems could eliminate the sources of conflict between workers and employers. Because the optimal work system was to be determined through "scientific" engineering studies, there was no role for bargaining and therefore no need for union representation.

A major lasting effect of scientific management was its advocacy of industrial engineering principles and a narrow division of labor in organizing work. This form of job design and work organization gradually became the standard in the mass-production industries, and unions inherited this form of workplace organization when they expanded their membership in those industries (e.g., auto, steel, and textiles).

Scientific management is used around the world. By the mid-twentieth century, factories in most advanced industrial countries were organized using its principles. One particularly striking example is how the Soviet Union adopted Taylor's principles of scientific management despite the obvious differences between the capitalist and the communist economic systems. Over time, however, the Taylorist approach to work organization ran into increasing problems in advanced industrial countries. One set of problems arose from the relatively inflexible nature of the Taylorized workplace, which could not deliver the flexibility production companies needed and the quality of products that consumers were increasingly demanding.[2] A second source of problems was workers who were increasingly unwilling to work on deskilled, monotonous assembly lines and dissatisfied with the decreasing economic returns as wages for this type of work stagnated or declined. The problems with Taylorism spurred a series of efforts to develop new forms of work organization, which will be described next.

The decline in Taylorist factory work in advanced industrial economies is partly due to increased competition from manufacturing based in transitioning countries that use similar production methods but have lower labor costs. A key advantage of the scientific management approach is that it can be transferred relatively easily to different settings. A factory can be organized on principles of scientific management as easily in Brazil or China as it can in the United States or Britain. When competition is based primarily on cost, factories in transitioning countries with lower wage levels are able to outcompete their counterparts in wealthier high-wage countries by using the same scientific management principles to achieve similar productivity levels.

Lean Production and Quality-Focused Involvement

One major alternative to the scientific management approach to work organization is the **lean production** approach that was developed primarily by Japanese firms beginning in the 1960s. The lean production system, most famously exemplified by the Toyota auto company, was based on the idea of removing slack from the production process and encouraging an intense emphasis on improving quality. This emphasis on quality throughout the production process, sometimes known

as **total quality management**, was influenced by the ideas of the American management theorist Edwards Deming. Although Deming was largely ignored in his own country, Japanese firms adopted his ideas of quality maximization to transform their manufacturing. While Japanese manufacturers had a reputation for producing poor-quality goods in the 1940s and 1950s, by the 1980s and 1990s, they led the world in levels of quality and productivity.

In the lean production approach, workers are given responsibility for ensuring quality throughout the production process. This is done in part through narrowly focused employee involvement programs that focus on improving quality. In these programs, sometimes known as **quality circles (QCs)**, hourly workers meet as a group with their supervisors outside normal production time to discuss ways to improve quality and productivity. This type of employee program is also known as an off-line participation program because meetings take place away from the assembly line.

The success of Japanese firms who used lean production and quality-focused employee involvement programs influenced manufacturers in other countries to adopt these approaches. In the automobile industry, Japanese companies such as Toyota and Honda achieved levels of quality and productivity that far exceeded that of their American counterparts. This led companies in other countries to adopt lean production and total quality management approaches.

Many companies initially reported large payouts from off-line participation programs such as quality circles. In some companies, scrap rates began to drop significantly after QCs were started up, and in others QCs were able to quickly identify ways to save money by making changes in production processes. Over time, however, the gains from QCs declined in company after company. At times workers became frustrated by and in some cases stopped attending QC meetings after management rejected or ignored their suggestions. In other cases, workers continued to attend QC meetings but ran out of suggestions because all their ideas required changes in work rules or contractual clauses and these issues were outside the purview of the QC. This problem arose in companies where both management and the union had defined QC activity as a supplement to normal collective bargaining and labor relations. In these cases, QCs were not typically authorized to address work rules, contractual issues, the nature of technology, or basic production methods.

The most successful employee participation programs eventually broadened to involve work rules, collective negotiations issues, and production methods (essentially all the things that initially had been kept separate from the participatory process). Unless this broadening occurred, the employee participation process was not able to address the important issues that affected economic performance and long-term employment security.

Teamwork Production Systems

Teamwork production systems are another approach to work organization that focus on reorganization of the production process to increase the participation of workers in decision-making. One source for this approach to work organization

was work on sociotechnical systems design, which emphasized analyzing workers and the technology used in the production process as an integrated system. Sociotechnical systems design principles encourage the development of production processes that increase the ability of employees to participate in and control how technology is used in production. This often involves giving work teams of employees the discretion to decide how best to perform work tasks. Some of the leading early examples of this approach came from Sweden, where self-managed teams of workers in the Kalmar and Uddevalla car factories would assemble a complete vehicle using specialized production equipment that replaced the traditional assembly line.

Teamwork systems require a fundamental reorganization of workplace relations because they replace multiple and narrow job classifications with jobs that are broader in scope, that involve workers in making decisions, and that require investment in training. Typically, work teams do their own inspections, since they must take responsibility for quality performance. In some cases, the teams also do their own scheduling, assign tasks, certify workers' skill levels, handle materials, perform housekeeping tasks, and do routine repair work. Workers learn information about financial performance and other business matters in team meetings and other participatory meetings. Traditional supervisors often are replaced with team leaders who are sometimes (but not always) drawn from the ranks of workers rather than from the first line of management.

Modular Production

Modular production is an innovation in the organization of the workplace that has become increasingly important. In modular production systems in auto assembly, the company producing the vehicle, which is typically a multinational corporation, directly employs a relatively small labor force in the factory. Much of the assembly work is done by the employees of different subcontractors who work inside the factory directly on the assembly line. These subcontracted employees are each responsible for a separate module that goes into the final vehicle. This approach separates the multinational corporation from responsibility for much of the assembly work and pays lower wages to most of the work force doing the assembly work.

The use of modular production does not mean that other systems of work organization are not also being used in these workplaces. Aspects of lean production and teamwork approaches are also found in these auto factories. The use of modular production does, however, change the labor relations situation. Unions in factories that use modular production must try to represent employees of multiple different companies in the same factory. This creates problems with the coordination of negotiations and opens up the possibility that the employer will play one group of workers against another in seeking to reduce labor costs.

The Relationship between Participation Programs and Union Representation

In companies where participatory processes expand and become integrated in the organization of the workplace, unions that represent workers at such sites face

challenges about how to manage and coordinate the overlap. On the one hand, unions are tempted to try to maintain a clear and sharp separation between participatory activities and collective negotiations procedures and issues. Drawing such a separation can help the union leadership, particularly when a participatory program has just begun and some workers (or union officers) remain skeptical about the program's objectives and implications. One way the parties try to accomplish this separation is by adopting a rule declaring that during team meetings workers cannot raise issues that are normally dealt with through the grievance procedure or the collective agreement.

Although separating participatory processes and collective negotiations issues might make sense in this early phase, if the participatory process matures, the line between collective negotiations and participatory process blurs over time. As unions and workers participate more directly in decisions, labor and management often find that the formal procedures outlined in the labor agreement become less important. In some firms, as team meetings begin to tackle serious issues, they become a forum where workers can air their complaints. The parties then make alterations that might otherwise be processed through the collective negotiations and representation process. Unions may want to allow the participatory process to evolve and produce the kinds of innovations that can lead to improved cost competitiveness for their employer and thus to their own employment security. Yet unions also do not want to abandon the important roles that remain for the grievance procedure and formal negotiations.

How can a union maintain a proper balance between direct worker involvement in decision making and its responsibilities to represent workers? The answer seems to lie in a change in the roles of unions and union officers. The union must allow participation to proceed but must continuously coordinate and oversee this process and its connections to collective negotiations and representation. This means that union committee persons, for example, must know about what transpires in any team meetings in their jurisdiction. Union members should also discuss the participatory programs at union meetings and report to the union about any role it plays in participatory activities.

Several cases show that when a union ignores or maintains an arm's-length distance to a participatory process, at some point a confrontation develops or the participatory process withers. This may be exactly the outcome a union opposed to participation wants, but for unions that support participation, it can be an unfortunate development.

Joint steering committees or planning boards can help unions oversee and coordinate participatory processes. In addition, individuals who serve as facilitators in joint activities play a critical role in mediating any tensions that might arise. Some of the best facilitators are former union officers, as these people tend to be well respected by the work force and adept at fashioning compromises. The net result is the creation of a complex set of committees and new jobs (e.g., facilitators) that serve to coordinate participation, **work restructuring**, and collective bargaining. The simultaneous expansion of so many joint activities has combined to bring a restructuring of the job responsibilities of union representatives. In many unionized settings, union officers now spend as much (or even more) of their

time in joint activities than they do in the traditional arm's-length activities that characterize opposing labor-management interests.

This trend has led to changes in job titles and job funding. As joint activities have expanded, more union jobs have offered workers the opportunity to be facilitators. Many of these positions are funded out of jointly managed funds.

At the same time, union leaders run considerable political risks and put the joint effort at risk as well if they become so involved in managing their participatory process that they lose sight of their responsibilities to represent member interests in grievance handling or other day-to-day developments. In essence, a new role for union leaders is developing that requires them to balance their different responsibilities.

The Expansion of Joint Activities

The number and range of joint activities in contemporary unionized settings has grown from the 1990s to the present. Other joint activities in unionized settings include employee assistance programs (alcohol and drug abuse counseling), health and safety committees, absenteeism reduction programs, training and education activities, and community service programs. These programs are all jointly administered (and often funded) by both unions and management.

In service industry companies (such as hotels or hospitals) where multiemployer bargaining structures exist, these joint efforts often cut across employers. Two of the more innovative partnerships are between the San Francisco Hotel Association and the Hotel and Restaurant Employees Union and between Local 1199 of the Service Employees International Union and the New York City League of Voluntary Hospitals. Both of these efforts are funded from allocations that are negotiated in collective bargaining. They provide a wide range of services to the workers and their families in these bargaining units, including immigration assistance, child care, and job-related education and training.

Many of these joint programs started long before the expansion of participatory processes. The economic and social pressures that have led to an increase in the number participatory processes are prompting the expansion of other joint programs. Absenteeism reduction programs, for example, also are expanding because of cost-control pressures.

Worker and Union Participation in Strategic Decisions

In some plants, the involvement of workers or unions in strategic issues comes about through formal committees. In other cases, workers and union officers are drawn into strategic issues gradually and informally. This evolutionary expansion in roles occurs in some auto plants where workers and union representatives sit on planning committees that operate at the plant level. These committees have the task of developing modifications in work rules and other manufacturing practices to keep work in a plant (and avoid outsourcing) or to help a plant win bids on new work.

In order to attract or retain business, these committees typically develop methods to reduce costs and improve product quality and customer services. Like the joint design teams at Kaiser Permanente (see Box 11.2), these committees are drawn

BOX 11.2

The Labor-Management Partnership at Kaiser Permanente

The Kaiser Permanente (KP) health care system and its coalition of unions have one of the most extensive partnerships in the United States. The partnership covers both strategic and workplace issues. The Labor Management Partnership at Kaiser Permanente started in 1997, emerging from a period of conflict between Kaiser Permanente and its unions, which represent a wide range of employees including nurses, doctors, customer service representatives, and technicians. Today the Labor Management Partnership covers more than 100,000 union employees, 14,000 managers, and 18,000 physicians in seven states and Washington, D.C.

Over the years, the two parties have worked together on such policy issues as nurse-to-patient staffing ratios and health care reform. They have bargained four national agreements using an interest-based approach and have ratified groundbreaking agreements on employment and income security. Perhaps the most ambitious endeavor was the partnership's launching of 3,500 unit-based teams that work to improve care, service, and affordability every day.

The partnership has periodically addressed critical strategic business issues. An example is the events surrounding the opening of a new hospital in southern California.

In early 1998, KP decided it urgently needed to open a new hospital in Baldwin Park, California. Normally, it would have taken approximately two years to plan and open a new hospital of this size (approximately 240 beds). Top executives at KP determined that the new hospital needed to be brought on line before the next winter's flu season began in the late fall.

Because of the existence of the Labor Management Partnership, a decision was made to give this problem to a joint task team made up of a broad cross-section of physicians, managers, nurses, technicians, and other employees who had expertise in how a new hospital could work. They were urged to use the consensus-based principles built into the partnership to design a hospital that all parties would experience as a positive working and health care environment. In April 1998, a labor-management team of more than 150 employees took up this task. They brought in employees and managers from other medical centers who were considered leaders in their specialties. The parties engaged in training on problem solving and interest-based decision making, visited GM's Saturn plant and other innovative companies to assess different models of joint participation and co-management, and participated in what they called a five-day "Blitz Week" of intensive discussions about how to design the flow of patient care.

The team designed a hospital that focused on patient-centered care. Much equipment was available at bedside rather than in specialized areas that

required patient transport and coordination. For instance, telemetry units, which are often located only in critical care units, were installed in every room, making the new hospital's capacity both greater and more flexible than that of many other hospitals. In the end, the team successfully planned an innovative, staffed, and well-designed hospital in a virtually unheard-of period of just eight months. The hospital opened in October, beating the onslaught of the winter's flu season. Dr. Oliver Goldsmith, medical director for the Permanente Medical Group's Southern California region, remarked: "This is probably the most significant venture we will do inside Kaiser Permanente over the next decade. It will serve as a building block for what lies ahead."

Source: Thomas A. Kochan, Adrienne Eaton, Robert B. McKersie, and Paul S. Adler, *Healing Together: The Labor-Management Partnership at Kaiser Permanente*.(Ithaca, N.Y.: ILR Press, 2009)

into strategic issues as the participants gain access to financial and operating information that previously was available only to plant management as part of efforts to develop strategies to reduce costs.

The Effects of Downsizing and Outsourcing: Heightened Concern for Employment Security

Experiences with **downsizing** and the fear that companies would outsource even more work abroad or to lower-cost (and often nonunion) domestic production sites led many unions to increase their involvement in business issues. These concerns also led unions to bargain for explicit employment security clauses as part of agreements that included participation programs and contractual concessions on pay or work rules. Because of the concern of unions about their declining membership, some agreements that promoted joint labor and management partnerships also stipulated that employers would remain neutral during union organizing campaigns. In some cases, some agreements even required management to accept card check union recognition procedures that avoided the need for representation elections.

The Sources of Failure

Joint processes seldom last forever. Many fail in their early stages because either management or union leaders are unable to make the adjustments needed to integrate joint efforts with collective bargaining, ongoing labor-management relations, or operational decisions that in the past were made solely by supervisors or middle managers. Some joint processes that have been successful for some time lose support when their initial champions and supporters from within management and/or labor retire or leave the company. Other joint processes eventually fall victim to fundamental changes in markets or to business strategies

that are outside the purview of the joint effort. Labor leaders have come to realize that despite the existence of a participatory process, sometimes decisions are made in the old way by top managers alone instead of including input from workers and unions. Because of this, some labor leaders have pressed to gain a voice in strategic decision making at the management level.

THE DEBATE SURROUNDING PARTICIPATORY PROGRAMS

There is much debate among workers, unionists, and academics about the nature and consequences of participatory programs. Critics of these programs argue that they do not lead to real increases in the extent of the involvement of workers or unions in decisions. These critics claim that instead, management uses participatory programs to increase the pace and difficulty of work. They note, for example, that some team systems are used to put peer pressure on workers and remove the independent voice union representation provides. To these critics, teams and other participatory programs are part of **management by stress**.[3] They also argue that participatory programs are designed to function as a halfway house in the transition from union representation to nonunion operation.

The proponents of participatory processes see things differently. They admit that the pressure of heightened international and nonunion competition has led to increases in the pace of work and many pay concessions. But the proponents claim that increased worker and union participation in decision making can lead to reductions in costs, and to improvements in employment security, and to more interesting work. To the proponents of participation, if a union becomes involved in a participatory process (possibly through the joint committees discussed above), it can gain greater involvement in the very issues that are of critical importance to workers. What better way for the union to fulfill its historic mission of representing workers' interests than to be involved in work restructuring and in the strategic business decisions that shape workers' lives? say the proponents.

Researchers show that narrowly defined partnership programs have only small positive effects on product quality and negligible effects on productivity. They found that many partnership programs are unable to expand to include a comprehensive array of workplace matters and that this leads to limited impacts on firm performance. For example, in his analysis of data from a national sample of establishments, Paul Osterman found that while high-performance work practices spread substantially in the 1990s, those practices led to less than rosy outcomes for workers; they did not reduce layoffs and they did not lead to pay gains for workers.[4]

WORKPLACE ATTITUDES AND BEHAVIORS

The operation of the workplace labor relations system affects the attitudes and behaviors of workers. Workplaces with high levels of employee participation in decision-making and fair treatment benefit from greater levels of employee motivation and engagement. Conversely, workplaces with high levels of unresolved

conflict and a lack of due process may have problems with retaining and motivating their work force.

One useful framework for understanding the impact of workplace practices on employee attitudes and behaviors is the **exit-voice** model, which Freeman and Medoff first used in the context of the analysis of labor relations.[5] The exit-voice model posits that in response to a deterioration in conditions in the workplace, an employee has two possible responses. The first is to attempt to ameliorate the problem through using his or her voice, for example by expressing his or her concerns to management. The second is to remove him or herself from the negative situation by using the exit option of quitting.

High levels of use of the exit option can have negative consequences for a company. The firm may lose valuable, experienced workers. It will experience greater costs associated with having to recruit and train new workers, who initially may have lower productivity levels. Constant turnover of the work force may have negative effects on the morale of the workers and reduce commitment to the company.

This analysis indicates that stronger voice options for workers can improve company performance. Unions can improve both company performance and outcomes for workers by providing a voice mechanism in the workplace. One aspect of union voice is the ability to negotiated improved wages and other employment conditions through collective bargaining. Another aspect of union voice is the fact that representation helps employees express concerns in the workplace and ensures due process when conflicts arise. Unions can do this by negotiating for stronger employee participation and conflict management procedures and by representing employees when they use these procedures.

Participation programs can also be a source of employee voice in the workplace. To the degree that participation programs address the concerns of employees, this form of proactive voice can reduce use of the exit option of quitting.

Research has extended the exit-voice model to include other responses such as loyalty, neglect, or sabotage. The extended **exit-voice-loyalty-neglect** model suggests that the nature of the response to workplace problems will depend on the individual employee. In the original exit-voice model, researchers predicted that loyal employees would be more likely to use voice mechanisms in response to problems at work. However, subsequent research found that more loyal employees tended to use neither the exit nor the voice options and would more often suffer in silence.[6] This behavioral response is especially worrisome for companies because it suggests that the loyal employees the firm most values are the ones who benefit least from voice mechanisms designed to resolve conflicts.

The neglect response to workplace problems involves lower motivation, commitment, and effort on the part of workers and neglect of their job duties. This is likely to reduce productivity and company performance. More problematically, this category can also include more negative responses such as retaliation against the other party to the conflict and workplace violence or sabotage or destruction of property. The threat of these negative behaviors further reinforces how important it is for companies to have effective mechanisms for employee voice in a well-functioning workplace labor relations system.

Summary

The operation of the workplace labor relations system has a major impact on company performance and worker outcomes. How work is organized affects how productive a company can be and what quality of goods it can deliver. Compared to traditional management-directed forms of work organization, new approaches that incorporate employee participation in decision making have the potential to produce greater flexibility and higher quality of production while also improving employee motivation and job quality. The provision of mechanisms for employee voice such as union representation, workplace participation programs, and conflict resolution procedures affects the attitudes and behaviors of employees in the workplace. When employees have effective voice in the workplace, a company is less likely to experience the negative consequences of employees exiting the company, suffering in silence, neglecting their job duties, or engaging in destructive behavior.

Experience suggests that efforts to achieve change and improvements in labor management relations through participatory processes cannot operate in isolation from collective bargaining. Collective bargaining reforms seem to work best when they are associated with consistent changes across all three levels of industrial relations activity: workplace changes must be reinforced by changes at the collective bargaining and strategic levels, and the same is true for changes at the other two levels.

Piecemeal programs are often short lived. However, participatory processes that have changed the roles of workers and managers and institutionalized these new roles in concrete practices have proven successful. The ultimate success of employee involvement processes and other workplace reforms depends on the ability of a company to reinforce and sustain high levels of trust. That trust, in turn, depends heavily on the extent to which the strategies and events that unfold at the higher levels of the labor relations system are consistent with and linked to the development of greater trust at the workplace.

Expansion of the process to the strategic level of decision making does not occur easily or automatically. Management tends to closely guard its control over issues that have traditionally been viewed as its prerogatives. Thus, a strong union presence and active union support for the process are essential. Nonunion firms and firms with weak unions are unlikely to develop or sustain a full form of worker participation. It is still the case that in many companies, employees or unions are not involved in forming company strategy. Many managers still doubt the value of involving workers and unions in a company's strategic decision-making.

Discussion Questions

1. Contrast the core features of Taylorist and team-oriented systems of work organization.
2. Discuss how unions might be able to manage the overlapping roles of participation programs, work restructuring, and collective bargaining.

3. Briefly describe the debate over participation programs.
4. Describe the exit-voice-loyalty-neglect model.

Related Web Sites

Kaiser Permanente Labor-Management Partnership:
https://healthy.kaiserpermanente.org

SEIU 1199-NY Healthcare Employers Partnership:
http://www.labormanagementinitiatives.org

Suggested Readings

Appelbaum, Eileen, Thomas Bailey, Peter Berg, and Arne L. Kalleberg. *Manufacturing Advantage: Why High Performance Work Systems Pay Off*. Ithaca, N.Y.: ILR Press, 2000.

Hirschman, Albert O. *Exit, Voice, and Loyalty*. Cambridge, Mass.: Harvard University Press, 1970.

Kochan, Thomas A., Adrienne Eaton, Robert B. McKersie, and Paul S. Adler. *Healing Together: The Labor-Management Partnership at Kaiser Permanente*. Ithaca, N.Y.: ILR Press, 2009.

Kochan, Thomas A., Harry C. Katz, and Robert B. McKersie. *The Transformation of American Industrial Relations*. 2nd ed. Ithaca, N.Y.: ILR Press, 1994.

Notes

1. For a good discussion of the drive system and other aspects of American management, see Sanford Jacoby, ed., *Masters to Managers* (New York: Columbia University Press, 1991).

2. Michael J. Piore and Charles F. Sable, *The Second Industrial Divide* (New York: Basic Books, 1984).

3. The term management by stress is used in Mike Parker and Jane Slaughter, *Choosing Sides: Unions and the Team Concept* (Boston: South End Press, 1988). Also see Guillermo J. Grenier, *Inhuman Relations: Quality Circles and Anti-Unionism in American Industry* (Philadelphia: Temple University Press, 1988).

4. Paul Osterman, "Work Re-Organization in an Era of Restructuring: Trends in Diffusion and Effects on Employee Welfare," *Industrial and Labor Relations Review* 53 (January 2000): 179–196.

5. Albert O. Hirschman developed the exit-voice model in the context of relationships between businesses and customers; see Albert O. Hirschman, *Exit, Voice, and Loyalty* (Cambridge, Mass.: Harvard University Press, 1970). Richard Freeman and James Medoff later adapted it to the analysis of labor relations; see Richard Freeman and James Medoff, *What Do Unions Do?* (New York: Basic Books, 1984).

6. Karen E. Boroff and David Lewin, "Loyalty, Voice, and Intent to Exit a Union Firm: A Conceptual and Empirical Analysis," *Industrial and Labor Relations Review* 51, no. 1 (1997): 50–63.

12 Conflict Resolution at the Workplace

BASIC PRINCIPLES

This chapter focuses on the resolution of the conflicts between managers and employees that commonly arise in the workplace. In unionized settings, this involves resolving conflicts about contract administration below the level of formal contract negotiations.

Collective bargaining agreements in the United States are elaborate and detailed documents. The existence of such extensive labor contracts led to the need for an orderly way for settling conflicts over interpretations of contract language.

The principle that "management acts and the union reacts" or, put another way, "it is management's job to manage and the union's job to grieve" is engrained in U.S. collective bargaining. This has led to a reliance on grievance and arbitration procedures as mechanisms to resolve conflicts that arise at in unionized workplaces. The bulk of this chapter discusses how grievance and arbitration procedures operate.

In nonunion settings, the employer must consider how to resolve the workplace conflicts that will inevitably occur. In recent years, employers of nonunion workplaces have increasingly adopted various mechanisms for resolving disputes, improving communication, and solving problems. Growing concern about the impact of employment litigation is a major reason for the development of nonunion dispute resolution. Such lawsuits have helped inspire the controversial expansion of mandatory arbitration procedures for resolving legal claims. Thus, this chapter also examines nonunion dispute resolution procedures and the debates over their role in industrial relations.

THE GRIEVANCE PROCEDURE

The grievance procedure specifies a series of steps that are to be taken to resolve a worker's complaint that management has not followed the terms of the collective bargaining agreement. The steps found in a typical procedure are outlined in Box

BOX 12.1
Steps in a Typical Grievance Procedure

Step 1
- The union steward and the employee discuss the problem informally with the employee's supervisor.
- The union steward and the employee decide if the problem has been resolved or, if not resolved, whether a contract violation has occurred and whether to proceed with a formal grievance.

Step 2
- The grievance is put in writing and submitted to the designated line manager.
- The union steward and a management representative meet and discuss the grievance.
- Management's response is put in writing. A member of the industrial relations staff may be consulted at this stage.

Step 3
- The grievance is appealed to top-line management and industrial relations staff representatives, who meet with higher-level local or national union officers to discuss the grievance and attempt to negotiate a resolution.
- Management's response is put in writing.

Step 4
- The grievance is appealed to arbitration for a final and binding decision by a neutral labor arbitrator.

12.1. Each succeeding step in the decision-making process involves a higher level of the union and management organizations. The final step in almost all grievance procedures in unionized settings involves a hearing of the dispute and a final binding judgment by an arbitrator.

Most often the grievance procedure comes into play when an employee has a complaint about the actions of a supervisor. Below we trace how an employee complaint makes its way through the typical grievance procedure.

Step 1: Step 1 of the procedure outlined in Box 12.1 gives the employee and his or her supervisor the opportunity to resolve the employee's complaint by talking about the problem. The supervisor might be unaware that there is a problem and oral discussion might quickly resolve the issue. At this point, the employee's union steward might help the employee as he or she brings the issue to the attention of the supervisor.

Step 2: If the grievance (complaint) is not resolved in these discussions, the employee can choose to drop the matter or proceed to step 2, where the grievance is put in writing. In step 2, the union steward meets with a

management representative and management eventually writes a response. The process of putting the grievance and management's response in writing gives the parties the opportunity to formally make their cases, and this often serves to clarify exactly what is in dispute. At this step, many grievances are resolved or the grieving party drops his or her complaint.

Step 3: Step 3 in the grievance procedure involves top-line management, industrial relations staff, local union officers, and possibly national union staff. The involvement of higher-level union and management staff consumes valuable time and resources, and for this reason a union's decision to press a grievance to the third step is not usually taken lightly.

Step 4: If the grievance has not been resolved at earlier steps, it can be appealed to arbitration for a binding decision in step 4. It is the union and not the employee that decides whether to appeal a grievance to arbitration. Court decisions gave unions this power on the grounds that it is the union that creates and "owns" the grievance procedure.

Reasons Why Grievances Are Filed

Employees commonly file a grievance when they think management is not fairly living up to the collective bargaining agreement. The grievance procedure provides a mechanism for workers to air their displeasure with management's actions, to change management's behavior, or to receive some form of compensation for management's actions.

Disagreements about employee discipline are a common source of grievances. Collective bargaining agreements commonly give management the right to discipline employees. Contracts often outline certain actions that can lead to discipline, such as repeated absenteeism or failure to follow a direct order from a supervisor. An employee might file a grievance against a disciplinary action taken by management either because the employee contests management's claim that the employee did something wrong or because the employee believes that the disciplinary action that was imposed was too harsh for whatever mistake the employee made.

When labor and management negotiate the collective bargaining contract, they try to cover the major issues and write language that will guide future behavior. However, the contract does not specify what is to happen under all circumstances. It would be impossible and too costly for negotiators to write contractual language that covers any but the most common events. Thus, the parties also turn to the grievance procedure as a way of resolving issues that the labor contract does not cover explicitly.

Many collective bargaining agreements, for example, specify that supervisors are not allowed to perform work that is commonly performed by someone in the bargaining unit. Unions favor this clause as a way of keeping jobs for union members and to prevent management from circumventing the terms of the contract by moving work out of the bargaining unit. When new technology is introduced at a plant, it often changes the duties workers perform and adds new types of work. Is the new work still in the bargaining unit or can it be performed by a supervisor? It would be extremely cumbersome for labor and management to

include language in the labor agreement specifying in detail what is to happen in every such case. Instead, the parties use the grievance procedure to resolve disputes that arise over this issue.

In addition, things frequently happen that were never anticipated by the parties when they were negotiating the labor agreement. What form of compensation, for example, should workers receive if they are sent home after a power outage forces the closing of a plant in the middle of the day? Should employees be paid for a full day's work in such a case? Should the amount of compensation vary, depending on how much of the day the employees worked before being sent home? When the labor contract does not include language that covers this type of occurrence and employees are upset by the compensation management decides to provide, the employees might turn to the grievance procedure to settle the matter.

Filing grievances can also serve other purposes. Employees may file grievances as a way of demonstrating their concern about issues that are not addressed in the collective bargaining agreement. For example, employees might be concerned about workplace injuries such as repetitive strain injuries from the way they have to perform their jobs and may express their concern by filing grievances over the issue. In these sorts of cases, the grievance procedure can serve the valuable function of warning management about problems that might otherwise be ignored.

Employees and their union also might use the grievance procedure as a tactical pressure device. Filing grievances over an issue can serve, for example, to rally employee interest in bringing the issue to the bargaining table in the next contract renewal negotiation. In this sort of case, the union may know that filing grievances will not lead to immediate changes in management's behavior. However, grievances will put pressure on management and thereby increase the union's bargaining leverage.

THE HISTORICAL EVOLUTION OF GRIEVANCE ARBITRATION

Arbitration is the common device stipulated in labor contracts to resolve grievances that are not settled in earlier steps (see step 4 in Box 12.1). Arbitration is a quasi-judicial procedure in which a third party settles a dispute by issuing a binding judgment. The use of arbitration to settle grievances that arise during the term of a collective bargaining is referred to as grievance (or rights) arbitration.

Arbitration developed early in the U.S. industrial relations system. Arbitration of minor disputes over the interpretation of agreements, for example, was mentioned in the United States Industrial Commission Report of 1902.[1] Before World War II, grievance procedures ending in binding arbitration were common in the clothing and anthracite coal mining industries.

The Spread of Arbitration

It took the strong advocacy of the national War Labor Board (WLB) during World War II for grievance arbitration to become a common practice across

unionized industries. In many of the thousands of disputes it handled, the board encouraged the parties to include an arbitration clause in their bargaining agreement, and in some cases the board required it. Arbitration served as an alternative to strikes and other types of industrial action for resolving workplace conflicts. This was an important consideration in the context of a wartime economy where work stoppages were particularly costly.

The Taft-Hartley Act of 1947 encourage the use of grievance arbitration. Section 203(d) of the act states: "Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes arising out of the application or interpretation of an existing collective bargaining agreement." The courts interpreted this provision as indicating that public policy supported grievance arbitration, which was the most common settlement method parties agreed to use.

Court Encouragement of Arbitration

A series of Supreme Court decisions known as the **Steelworkers' trilogy** encouraged the use of arbitration and insulated many arbitration awards from judicial review. These cases also gave grievance arbitration a protected status.[2]

The Steelworkers' trilogy decisions from 1960 are summarized in Box 12.2. These three decisions stated that

(1) the courts should rule only on whether a dispute can be arbitrated, they should resolve any doubts about such questions by ruling in favor of arbitration, and they should not consider the merits of a grievance when deciding whether a case can be arbitrated;

(2) the parties should view arbitration as the quid pro quo for giving up the right to strike and except for issues that are specifically excluded from the arbitration clause, all disputes arising out of contract administration should be resolved by arbitration; and

(3) the courts should not review the substantive merits of an arbitration decision but should confine their review to whether due process procedures were followed or whether the arbitrator exceeded his or her authority.

Judicial Deference to Arbitration

The Steelworkers' trilogy cases established the principle that the courts would not review disputes that were arbitrable. Subsequent Supreme Court decisions continued that basic principle and added some modifications (see Box 12.2). In the *Collyer* decision of 1971, for example, the Court deferred to an arbitrator to decide whether an employer had violated the obligation to bargain in good faith when the employer unilaterally changed certain wage rates and job duties. This ruling gave an arbitrator the responsibility of ruling on an unfair labor practice issue. In the *Olin* decision of 1984, the courts substantially broadened the unfair labor practice issues that arbitrators would decide (also see the *United Technologies* decision of 1984). Some of the other court cases summarized in Box 12.2 affected aspects of arbitration that do not involve **judicial deference to arbitration.**

BOX 12.2

Key Court and Administrative Decisions that Affect the Conduct of Grievance Arbitration

Year	*Case*	*Decision*
1957	*Textile Workers v. Lincoln Mills*	Courts may enforce arbitration awards.
1960	"Steelworkers' trilogy":	
	1. *Steelworkers v. American Manufacturing Co.*, 363 U.S. 564 (1960)	Courts should determine only arbitrability, i.e., whether the issue is covered by the contract, and should not decide the merits of a case. When arbitrability is in doubt, the case should be sent to arbitration.
	2. *Steelworkers v. Warrior Gulf and Navigation Co.*, 363 U.S. 574 (1960)	Disputes over contract terms are assumed to be arbitrable unless they are specifically excluded. The courts view arbitration as the quid pro quo for giving up the right to strike during the term of the contract.
	3. *Steelworkers v. Enterprise Wheel and Car Corp.*, 363 U.S. 593 (1960)	Courts should not review the substantive merits of the arbitrator's decision as long as the arbitrator's award is based on the content of the agreement.
1970	*Boys Markets, Inc. v. Retail Clerks, Local 770*, 389 U.S. 235 (1970)	Courts may issue an injunction against a union that forces it to refrain from violating a no-strike clause or when an issue is covered by an arbitration clause in the contract.
1971	*Collyer Insulated Wire and Local Union 1098*, 192 NLRB 837 (1971)	The NLRB will defer to arbitration disputes when the issue could be decided either through arbitration (because it is covered by a clause in the bargaining agreement) or by an NLRB ruling (because the grievance alleges an unfair labor practice).
1976	*Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554 (1976), preceded by several other key cases, especially *Steele v. Louisville & Nashville R.R.*, 323 U.S. 192 (1944) and *Vaca v. Sipes*, 386 U.S. 171 (1967)	The courts should not sustain an arbitration award when the union has violated its duty to represent the grievant fairly. Federal courts will decide suits of this nature.
1983	*Bowen v. United States Postal Service*, 103 U.S. (1983)	A union may be held liable for a portion of an award to an employee if the union has violated its duty of fair representation.

Year	*Case*	*Decision*
1984	*Olin Corporation*, 268 NLRB 86 (1984)	This NLRB decision expanded the Collyer doctrine of deferral to arbitration of disputes involving unfair labor practices. The NLRB will defer to an arbitrator's decision unless the arbitrator's award is "clearly repugnant" to the law. The NLRB retained the right to decide whether an arbitrator adequately considered the facts that would constitute an unfair labor practice.
1984	*United Technologies*, 268 NLRB 83 (1984)	This NLRB decision further expanded the Collyer doctrine of deferral to arbitration of disputes that are brought to the board before arbitration that involve statutory rights and are covered by a collective bargaining contract.
1991	*Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20 (1991)	Statutory claims can be arbitrated without resort to the judicial forum. Arbitration of a statutory claim, however, does not forgo the substantive rights afforded by the statute.
2001	*Circuit City Stores v. Adams*, 532 U.S. 105 (2001)	The court ruled that according to the Federal Arbitration Act, employment disputes must be settled exclusively by final and binding arbitration if so dictated by the employment contract. Only interstate transportation workers are excluded.
2002	*Equal Employment Opportunity Commission v. Waffle House, Inc.*, 534 U.S. 279 (2002)	Limits the decision in *Circuit City*. The court ruled that the EEOC still has the right to pursue judicial relief for victims of employment discrimination, even if the individuals signed an agreement to settle all disputes through binding arbitration with the employer.
2009	*14 Penn Plaza v. Pyett*, 556 U.S. 247 (2009)	The court ruled that a union-negotiated arbitration clause in a collective bargaining agreement can require individual employees to send statutory employment rights claims to arbitration instead of going to court.
2011	*AT&T Mobility v. Concepcion*, 563 U.S. 333 (2011)	The court ruled that waivers of the right to bring a class action contained in an arbitration agreement are enforceable.
2012	*D. R. Horton, Inc.*, 357 NLRB 184 (2012)	The NLRB ruled that class-action waivers in employment arbitration agreements violate the right of employees to engage in concerted activity' under section 7 of the NLRA.

Over time, grievance arbitration procedures have evolved from a clinical approach to a more judicial approach. The WLB had advocated the clinical approach, and this approach was frequently used during the early postwar years.[3] The **clinical approach** emphasizes mediation of disputes, informal procedures, and arbitrator discretion in helping the parties develop a working relationship and consistent policies for interpreting and administering a contract.

In the 1950s, as the environment for collective bargaining became more structured and a body of past precedents grew, the arbitrator's scope of discretion narrowed. Both unions and management began to demand a more judicial approach to arbitration. The **judicial approach** is more formal and legalistic. The clinical model of arbitration may have filled a void in an otherwise unstructured environment, but as the parties formalized their internal policies, they turned to arbitrators only in disputes where their differences were clearly defined by the contract and the precedents that had arisen.

Thus, although modern grievance arbitration is still considerably more informal than court proceedings, it has come to rely on the use of formal rules of evidence, the examination and cross-examination of witnesses, submission of written briefs and post-hearing briefs, and written transcripts. The heavy formality of the grievance arbitration procedure has led some parties recently to search for alternative dispute-resolution procedures, a subject we discuss in more detail later in this chapter and in the next chapter.

THE FUNCTIONS OF GRIEVANCE PROCEDURES AND ARBITRATION

Grievance and arbitration procedures serve the needs of three separate constituencies—labor, management, and society.

Employee Interest in Due Process and Fairness

The grievance and arbitration procedures serve the interests of workers by delivering industrial justice and by protecting workers who use the procedure from recrimination for having exercised their rights. When workers lose confidence in the efficacy of these procedures, they may turn to other potentially more costly and disruptive mechanisms to provide due process. Thus, management often agrees to grievance and arbitration procedures to provide employees with due process because of the potential high costs of the alternatives.

Employer Interest in Labor Peace

Employers are attracted to the grievance and arbitration procedures because they reduce the likelihood that disputes that occur during the term of a labor contract will lead to stoppages in production. In exchange for accepting third-party arbitration of grievances, management commonly gains union acceptance of a clause that eliminates the union's right to strike over an issue that is covered by the grievance and arbitration clause. The labor contract between General Motors and the UAW, for example, contains the following language:

> During the life of this agreement, the Union will not cause or permit its members to cause, nor will any member of the Union take part in any sit-down, stay-in or slow-down, in any plant of the Corporation, or any curtailment of work or restriction of production or interference with the production of the Corporation. The Union will not cause or permit its members to cause nor will any member of the Union take part in any strike or stoppage of any of the Corporation's operations or picket any of the Corporation's plants or premises until all of the bargaining procedure as outlined in this Agreement has been exhausted, and in no case on which the Arbitrator shall have ruled.[4]

The strong support of the Supreme Court for arbitration in the Steelworkers' trilogy was based in part on the fact that management's agreement to arbitrate grievances is typically the quid pro quo for a union's agreement to include a no-strike clause in contracts.

Some labor agreements exclude particular issues from arbitration and instead allow the union to strike over unresolved grievances about these issues. **Production standards** (rules governing the pace of work) and health and safety issues are sometimes designated as nonarbitrable. For example, when issues involve health or safety, it may be impractical to require employees to follow management's orders and then wait for arbitration to settle disputes over the appropriateness and fairness of those orders. Thus, some contracts allow workers to strike over health and safety issues.

Joint Interests in Continuity and Consistency

Another function the grievance and arbitration procedures serves is that it addresses the common interests of labor and management. As Neil Chamberlain and James Kuhn have noted, labor and management have a mutual interest in achieving continuity and consistency in the application of a collective bargaining agreement. They both also benefit from procedures that allow them to be flexible as they address unforeseen developments and meet the unique needs of different groups and individuals.[5]

Finding the appropriate balance between uniformity and flexibility is a key challenge in administering the employment relationship. It is a particular challenge for grievance procedures and arbitration.

Society's Interests in Industrial Peace and Workplace Democracy

Grievance and arbitration procedures serve the interests of society by preserving industrial peace during the term of the contract, by keeping industrial disputes out of the courts or regulatory agencies, and by ensuring that unions and employers comply with public policies governing employment. As we will show, this set of public functions is becoming increasingly complex.

As the Supreme Court articulated in the Steelworkers trilogy of cases, collective bargaining between labor and management establishes a form of democratic governance of the workplace. In this vision of workplace democracy, arbitration of grievances by neutral labor arbitrators serves a function similar to that of the

courts in providing independent adjudication of legal disputes. As Justice Douglas argued, "The grievance machinery under a collective bargaining agreement is at the very heart of the system of industrial self-government. Arbitration is the means of solving the unforeseeable by molding a system of private law for all the problems which may arise and to provide for their solution in a way which will generally accord with the variant needs and desires of the parties."[6]

HOW ARBITRATION WORKS

Grievance arbitration systems have several core components. The specific design and operation of these components varies across collective bargaining agreements, but the basic role of the key components is similar.

The Components of Arbitration

The core of the arbitration procedure is a hearing in which the labor and management representatives present their positions on the issue in dispute to an arbitrator. These representatives are often lawyers, but others also act as representatives in arbitration, particularly on the union side. At some point after this hearing, the arbitrator announces a judgment on the issue. This decision is binding on the parties. Before or after the hearing, the parties sometimes submit briefs to the arbitrator. Thus, arbitration has three components: **prehearing briefs**, the hearing, and the **arbitrator's decision**.

Prehearing Briefs

Management and union representatives can submit prehearing briefs to the arbitrator. In these briefs, the parties can present their views of the issues and describe the evidence that supports their position. Briefs vary in length; sometimes they are long documents that are similar to legal briefs presented in legal cases.

In some cases, the parties jointly present prehearing **stipulations** to the arbitrator. A stipulation is an agreement between the parties about one or more of the facts or issues in dispute. For example, the parties might stipulate that an employee was absent from work, but ask the arbitrator to decide what was the appropriate penalty for being absent. Briefs and stipulations can make it easier for the parties in the arbitration hearing to quickly focus on the evidence and issues in dispute.

The Arbitration Hearing

In the **arbitration hearing,** the parties present their positions and evidence to support their cases. Hearings usually start with opening statements by union and management representatives. In disciplinary cases, management will commonly be asked to present their statement first.

Union and management representatives then present evidence to support their cases. Such evidence might include witnesses who observed particular events. If an employee is charged with committing an act that violates company policy,

such as hitting a supervisor, for instance, management might call as a witness someone who saw the worker and supervisor interacting. Unlike what happens in court hearings, there are no rules that exclude certain types of evidence in arbitration. However, the arbitrator will use his or her judgment about how much weight to give the evidence. For example, an arbitrator will generally give much greater weight to a firsthand account of an incident from a witness who saw what happened than to a secondhand account.

Evidence that documents past behavior by the employee or the company is critical in many arbitration hearings. The customs of a company and past practices in the plant are important criteria as an arbitrator makes a decision.

The hearing will typically end with closing statements by each side in which they summarize the key aspects of their case and their supporting evidence. The testimony given will sometimes lead union or management representatives to alter their arguments during the course of the hearing. Thus, it is not unusual for the parties' closing statements to focus on issues and evidence that differ substantially from the issues they raised in their opening statements.

The hearing does not bring the presentation of evidence and arguments to a close. The parties can present their views in a post-hearing brief, and they often do this in cases in which the issues in dispute are highly technical or complicated. Although the use of prehearing and post-hearing briefs may help the arbitrator resolve complex issues, they also add to the length and cost of arbitration.

The Arbitration Award

The arbitrator's decision, which is commonly known as the **arbitration award** is announced sometime after the hearing. Some labor contracts stipulate time limits for these awards. The arbitrator's award can be written or oral, depending on the language in the labor agreement and the preferences of the arbitrator. Although arbitrators tend to follow similar procedures and look at similar kinds of evidence, the preferences of individual arbitrators often play an important role in shaping their awards.

In the award, the arbitrator commonly states the issues and facts in the case. The arbitrator also summarizes the contentions and claims the parties have made in the hearing or in briefs. The arbitrator might discuss the merits of each side's evidence and claims. Of course, the most important part of the award is the section that outlines the judgment the arbitrator has reached on the dispute. The arbitrator can uphold or deny the grievance and has substantial discretion in fashioning a remedy to the dispute.

In a grievance case in which a firm has discharged an employee, for example, the arbitrator can deny the grievance and allow the discharge to stand or he or she can uphold the grievance and order the employer to reinstate the employee. If reinstatement is ordered, the arbitrator can order the company to pay the employee the full wages that have been lost due to the discharge. The arbitrator also could fashion a compromise settlement to such a case by ordering reinstatement but not ordering any back pay. Or he or she might order some other remedy.

The grievance-arbitration procedure gives arbitrators substantial discretion to fashion any remedy he or she believes is appropriate.

Arbitrators commonly see their task as resolving the grievance. They do not commonly add substantial punitive penalties to their decisions. Thus, in the hypothetical discharge case mentioned above, the best the employee could do is gain back the job, any back pay, and any lost rights (such as seniority lost while on discharge). The arbitrator would not assess a large punitive monetary penalty against the employer.

The Arbitrator's Decision Criteria

What does an arbitrator consider when deciding how to rule in a case? The next section outlines the criteria arbitrators commonly use in discipline and discharge cases. We use discipline and discharge as examples in part because these are frequent and important sources of grievances.

Discipline for Just Cause

Most labor agreements contain a clause stating that management has the right to **discipline** or dismiss employees only for **just cause**. Grievances over disciplinary actions and dismissals arise so frequently in part because labor agreements rarely define just cause precisely.

In a discipline case, the arbitrator must first decide if the employee actually did the act that management claims violates the labor agreement. If the arbitrator is convinced that the act did not occur, the grievance is upheld. In a case in which management alleges that an employee hit a supervisor, for example, the arbitrator would rely on available evidence (possibly the testimony of eyewitnesses) to determine if the employee did willfully hit the supervisor. If the arbitrator concludes that the act did occur, he or she must then decide if this act was a violation of the labor agreement.

Progressive Discipline

If the arbitrator concludes that the act did occur and that it violated the labor agreement, he or she must then decide whether the discipline the company imposed is appropriate. Arbitrators commonly require management to impose **progressive discipline,** in which the penalties increase in a stepwise fashion if there are repeated offenses. If an employee is absent one time after years of faithful service to the company, for example, an arbitrator is unlikely to uphold a penalty of discharge. Arbitrators allow severe disciplinary penalties for repeated absences, however, and want those penalties to increase as the number of absences mount. **Corrective discipline** is the underlying principle; that is, discipline should do more than punish. Arbitrators commonly require management to take steps to assist employees in correcting their actions and performance. The common steps in progressive discipline are issuing an oral warning, suspending the employee for some period of time, and then discharging the employee. Needless to say, when the offense the employee committed is severe, for example destroying major company property, the arbitrator might uphold immediate discharge.

The Importance of Past Practice

Arbitrators commonly rely heavily on the custom and **past practice** of management policy as a guide as they make decisions about grievance cases. If in the past employees in a firm have customarily been suspended for one week for their third unexcused absence, for example, an arbitrator would not allow a different disciplinary penalty for another employee for a similar offense unless there were extenuating circumstances. As a result, in most arbitration hearings, union and management representatives present their views about what past practice has been for related cases. If a similar case has not arisen in the same firm, the parties (or the arbitrator) might turn to customary practice in another firm or industry to justify their actions.

The Impact of Public Policy Considerations in Arbitration

The role of the arbitrator is to interpret and decide grievances based on the collective bargaining agreement. The arbitrator's authority comes from the agreement, and to the degree that his or her decision is based on factors that go beyond the terms of the agreement, the decision lacks this authority, which then means that it is not binding on the parties. At the same time, the expansion of employment laws since the 1960s has raised concerns about whether grievance and arbitration procedures should be responsive to the public policies that govern employee rights. Of chief concern is whether arbitration should be used to resolve claims of discrimination based on the protection of Title VII of the Civil Rights Act or whether those claims should be left to the courts to resolve. The same concern arises in claims that involve alleged violations of federal and state laws about safety and health, wages and hours, pensions, disability benefits, workers' compensation, unemployment compensation, and many other regulations that may overlap or even conflict with the provisions of the collective bargaining agreement.

The arbitration community is divided over the issue of whether arbitrators should consider the requirements of federal and state laws when deciding grievances or instead confine their decisions to interpretations of the rights accorded by the bargaining agreement. Those who advocate that arbitrators should stick to the bargaining agreement do so because they fear that considerations of public policy will increase judicial scrutiny of arbitration decisions and that arbitrators may make erroneous interpretations of such laws. They believe that arbitration has been widely accepted as an institution by the parties and that the Supreme Court assigned it a protected status in the Steelworkers' trilogy precisely because arbitrators limit their decisions to issues in which they have special expertise. Thus, advocates of minimal reference to federal and state laws are ready to trade off a reduced scope of jurisdiction in arbitration for protection of the status and autonomy that the highest court in the land has afforded labor arbitration since 1960.

Those who argue that arbitrators should play a more active role in resolving claims that involve public laws do so with full awareness that the arbitrator's role would shift from serving primarily the interests of the parties toward serving public policies. The central arguments in favor of this new role are that arbitration

is still cheaper, faster, and more efficient than the already overloaded judicial system. In this new role, it is argued, arbitration would remain a useful procedure for resolving disputes that arise under collective bargaining.

Who Are the Arbitrators?

The people who serve as arbitrators usually have some expertise in labor relations and the particularities of the industry in which the case arises. Some labor agreements provide for permanent arbitrators ("umpires") who are designated to handle all or some fraction of the grievances that arise during the term of a contract. The American Arbitration Association (AAA) is a private organization that parties often use to facilitate the process of arbitration. The AAA maintains an active list of arbitrators and can provide rooms for holding hearings. A labor contract might stipulate that parties should turn to the AAA for a list of five arbitrators and then allow each side to take turns crossing off names from the list to generate a decision about which arbitrator will hear a particular case.

Some arbitrators work at arbitration as a full-time occupation. There are also many part-time arbitrators who are also industrial relations or law school professors. Box 12.3, provided by renowned arbitrator Arnold Zack, describes who the arbitrators are and how someone can become an arbitrator.

BOX 12.3
Who Are Arbitrators and How Can I Become One?

Virtually every collective bargaining agreement contains provisions for arbitration to resolve workplace disputes. The union agrees to continue to work while the case is being processed and the employer agrees to comply with the arbitrator's decision including remedy to make whole if such a remedy is awarded. Such agreements also provide the procedures for selecting arbitrators, usually by agreeing on a single arbitrator or a revolving panel for the life of the parties' agreement or by using the procedures of the American Arbitration Association or the Federal Mediation and Conciliation Service (FMCS) if the parties are unable to agree on an arbitrator for a pending case.

Although several thousand individual arbitrators exist in the United States, most arbitration is done by the 600 members of the National Academy of Arbitrators (NAA), who are admitted to the academy after they have heard at least fifty cases in a five-year period. Concern over getting a decision that might make the employee whole and that conforms to the terms of the contract often leads disputants to wait many months for their preferred choice among the more seasoned arbitrators instead of trying newer, less experienced arbitrators. This makes it challenging for new entrants to gain experience and accounts for the rising average age of NAA arbitrators, which is now in the mid-60s.

While it is said that 90 percent of the cases are heard by 10 percent of the arbitrators, new people are always breaking into the field. Parties want arbitrators with mature judgment and experience in labor-management relations that is not easy to acquire without working on the union or management side. But it is often difficult for partisans to gain acceptability unless they have somehow purged themselves of alleged bias by spending some time working in a neutral occupation, such as in academia or working for a neutral government agency. Some newer arbitrators have come into the field by serving as interns with established arbitrators or from careers in government labor management agencies or as teachers of law, labor relations, economics, and psychology. Arbitration can hardly be an entry-level occupation for one's career choice. Rather, becoming an arbitrator is more a later-in-life happening as a reward for a career of fairness in whatever role an individual plays in the labor-management field. If you want to be an arbitrator, don't give up your day job!

Source: Arnold Zack, arbitrator and former president, National Academy of Arbitrators

The Union's Decision to Go to Arbitration

It is not a simple matter for a union to decide whether to press a grievance to arbitration. Arbitration is costly. A union might decide to drop a grievance if it believes the case is not winnable. Or a union might drop a grievance even though it thinks it can win the case if it concludes that the issue in dispute is insignificant and not worth the effort. A union might also decide not to bring a grievance to arbitration if it believes the issue is very important and should be brought up at the next contract negotiations. In this situation, the union might fear that winning the case in arbitration would diffuse the employee's concern and remove leverage it needs to press its case in negotiations.

Conversely, a union might decide to proceed to arbitration even if it believes the case is not winnable if union officers feel an obligation to the grievant (maybe because the grievant has loyally supported the union over the years) and cannot convince the employee to drop the issue. The union may also feel pressure to proceed to arbitration because of fear that the employee will file a legal claim contesting the union's decision not to go to arbitration. The union owes a legal **duty of fair representation** to the individual employee as it makes the decision of whether to proceed to arbitration.

The Duty of Fair Representation

In 1944, the Supreme Court held that in return for the right of exclusive representation, the union has the duty to represent all members of the bargaining unit "without hostile discrimination, fairly, impartially, and in good faith."[7] Since then, the union's duty of fair representation has become an important issue.

Four related developments brought the issue of fair representation to the fore:

1. The stringency of the standards the courts use to judge whether an employee has been fairly represented by the union.
2. The willingness of individual workers to bring claims against unions for failure to represent them fairly.
3. The increase in the number of court cases that deal with this issue.
4. The resulting reluctance of unions to drop grievances of questionable merit for fear that they will be sued for failure to represent the grievant fairly.

The U.S. Supreme Court has defined the duty of fair representation in a way that prohibits "arbitrarily ignoring a meritorious grievance or processing it in a perfunctory manner"; fraud, deceit, or bad-faith conduct in the handling of a grievance; and refusal to handle a grievance because of personal hostility toward the grievant.[8]

In *Hines v. Anchor Motor Freight, Inc.* (1976; see Box 12.2), the court ruled that both the employer and the union were to blame for failure to handle an employee representation case fairly.[9] The case involved an employee whose discharge had been upheld in arbitration. After the arbitration award was rendered, new evidence was discovered that proved that the employee was not guilty of the offense. Both parties were charged with failure to fully investigate the facts of the case in the original procedure.

In *Bowen v. United States Postal Service* (1983), the Supreme Court went one step further; it made a union and a company both liable for back pay in a case in which an employee was reinstated after the union refused to take the case to arbitration.[10] The result was that the union was required to pay part of the employee's lost wages even though it was the employer's wrongful decision that had led to the employee being out of work.

Unfortunately, these various judicial efforts to clarify and specify the standards to be applied in cases involving the duty of fair representation have not yielded unambiguous criteria for evaluating a union's performance. Although individual employees may sometimes feel that their union is not handling their grievances appropriately, there is also a danger that the threat of a lawsuit based on duty of fair representation may lead the union to take weak cases to arbitration instead of dropping the appeals. Taking unmeritorious cases to arbitration creates additional costs for the union and ultimately for individual union members because it is their dues that give the union the resources to pay for arbitration hearings.

THE CONNECTIONS BETWEEN GRIEVANCE PROCEDURES AND OTHER ASPECTS OF THE LABOR-MANAGEMENT RELATIONSHIP

In many ways, the operation of the grievance procedure is closely linked to other aspects of the labor-management relationship. The next section considers some of these linkages.

The Impact of Trust on Contract Bargaining and Contract Administration

The administration of a collective bargaining agreement does not operate in isolation from the events that take place in the negotiations process. The behavior and attitudes of the parties during negotiations typically carry over into the administration of the contract. This is not surprising because the same factors that increase the level of conflict and reduce the ability of the parties to settle without an impasse in negotiations also increase the level of antagonistic behavior during the administration of the contract.

The level of trust between the parties often carries over directly from contract administration to contract negotiations. When a large backlog of unresolved grievances piles up and adds to a hostile atmosphere between the parties during the term of the agreement, the negotiations process becomes a convenient forum for venting these hostilities. Similarly, when the grievance procedure or an arbitration decision has failed to resolve a problem, one party or the other can be expected to place a demand on the negotiation table to remedy the situation. On the other hand, vague or inconsistent language that was negotiated in a climate of distrust is likely to set the stage for conflict during the administration of the agreement.

Researchers have found that cooperative attitudes between union and management officials increase the likelihood that grievances will be settled at the lower steps in the procedure.[11] Data from the auto industry show a positive correlation between the rate of grievances filed and two indicators of the intensity of conflict in local contract bargaining: the number of issues introduced during the negotiations and the length of time it takes to reach a contract settlement.[12]

A comparative study of the dynamics of grievance settlements in two auto plants further illustrates this point. In the plant that exhibited a highly adversarial relationship, grievance rates and rates of appeal to higher steps in the procedure followed the cycle of bargaining. That is, the union in this plant would save up grievances and file them just before the start of contract negotiations to use this stockpile as a lever in negotiations and to rally the rank and file in support of the union's contract demands. In contrast, no such politicization of the grievance process occurred in a comparable auto plant that had a history of cooperative labor-management relations.[13]

James Kuhn has found that a lot of bargaining commonly occurs at the work group level outside the formal grievance procedure. Kuhn found that work groups can engage in **fractional bargaining**—that is, informal bargaining with the supervisor to modify or even to ignore provisions of the agreement that do not suit the group's particular needs.[14]

Midterm or Continuous Bargaining

The average length of collective bargaining contracts appears to be increasing in the United States. Federal Mediation and Conciliation Service data suggest that the duration of nearly 40 percent of new agreements is more than three years. Making this practice work, however, requires some means of addressing issues

that arise during the term of the agreement. Several ways of doing so, in addition to the grievance procedure, have been developed.

One long-standing practice is for labor and management negotiators to meet periodically to explore issues and reach informal agreements that are perhaps codified as letters that supplement the bargaining agreement. These letters are in effect binding commitments—they can be enforced through the grievance procedure, but they are meant to be somewhat less permanent than formal contract language. In some cases, the parties clarify how specific contract provisions will be interpreted or applied to different groups. Another practice, known as continuous bargaining is becoming more common, in which teams of company and union representatives engaging in bargaining over issues that come up during the term of the contract rather than waiting for the existing contract to expire. The advantage of this approach is that it can establish clear guidelines for when issues are dealt with, the potential range of issues, and the scope of authority or discretion for dealing with issues that come up during a long-term contract. It also provides protection against erosion of contract provisions by individual supervisors or groups who see some contract provisions as a constraint in their ability to address problems with production or service delivery. Instead of trying to get around the contract, parties can bring these problems to the mid-term or continuous bargaining forum.

Many labor and management leaders now use the interest-based principles used in contract negotiations to address problems that arise during the term of a collective bargaining agreement. This usually involves setting up some type of subcommittee or task force to study a problem and recommend a solution. More and more, the administration of labor agreements is blending with these and other problem-solving processes and the various types of employee and union-management participatory processes that we discussed more fully in Chapter 11.

The Limits of Arbitration: Conflicts over Technological Change

Although arbitration is effective in resolving many workplace conflicts, technological change can produce problems that are difficult to resolve through the traditional arbitration mechanism. Changes in technology can render previous unit determination decisions obsolete by modifying how the work is performed, raising the question of whether the new jobs created should be excluded from the existing unit. Computer-aided design (CAD) is one example of such a technological change. CAD can transfer drafting, model making, and other similar jobs from their traditional place in blue-collar production and maintenance units to the purview of design or manufacturing engineers. These engineers have traditionally been nonunion or have been members of a separate engineers' union and bargaining unit. In the aerospace industry, for instance, conflict has arisen over whether members of the machinists' union or members of the professional engineers' union should be given the work of maintaining the thousands of computers aerospace companies use.

Box 12.4 describes another technology-related dispute that was ultimately resolved by an arbitrator. In this case, robots took over some of the tasks traditionally

BOX 12.4
Arbitrating Cases involving Technological Change

THE ISSUE

Did the company violate the collective bargaining agreement when it assigned certain machining and fixturing work on robotics to nonbargaining unit personnel? If so, what shall be the remedy?

THE FACTS

The grievant and other bargaining unit personnel did fixturing work on production technology referred to as Robot No. 1. They did similar work for a while on Robots No. 2 and No. 3, but then this assignment stopped in 1984. In December 1983, the company formed a new department called Advanced Automation and Technology, and the fixturing work, what the company calls "development work," was given to nonbargaining-unit engineering personnel assigned to the new department.

THE ARBITRATOR'S DISCUSSION

In establishing the Advanced Automation and Technology Department, the company made a major change that affects the allocation of work that previously had been done by tool room personnel. . . . In a world of changing technology and methods, specific duties and responsibilities may shift within an organization. The issue in this case arises because of a shift from earlier technology (that is rather standard and can be adapted in a straightforward manner by bargaining-unit personnel) to new technology that requires considerable experimentation by engineers and technicians.

And so we have a situation where an organizational change has shifted the function of preparing production technology, but it is not clear whether the new skills and duties that are involved belong in the bargaining unit or elsewhere in the organization. Given the grey area that is involved in this dispute, it would be desirable for the parties to establish principles to guide the allocation of work.

THE ARBITRATOR'S DECISION

Given the fact that the union has not established conclusively that fixturing work for robotic technology belongs to the bargaining unit, it was not a violation of the collective bargaining agreement when the company assigned certain machining and fixturing work to nonbargaining-unit personnel.

Nonetheless, given that the establishment of the Advanced Automation and Technology Department represented a major decision with important consequences for the bargaining unit, . . . the parties are directed to negotiate in good faith over the effects of this change.

Source: Arbitration award of Robert B. McKersie in the case of Northrup Corporation and United Auto Workers Local 1596, 1 July 1986. Adapted and used with permission of the arbitrator.

performed by blue-collar workers. The issue was in part about who should be given the job of bringing the robots on line and adapting their specifications so they could perform specific jobs.

This example illustrates an important feature of the structure of bargaining in the United States. Because so much rests on the definition of the boundaries of bargaining units, many fine legal distinctions have been drawn over the years. Labor and management often rely on these legalistic rulings by the NLRB or by arbitrators to modify the boundary of a bargaining unit to fit changing technologies or changing company practices.

As new technologies and new ways of organizing work are adopted, these issues will become more common. The parties will need to find better ways of resolving the issues than through arbitration or NLRB precedents. As the arbitrator quoted in Box 12.4 observed, it is generally preferable for the parties to develop their own principles for handling these issues as they arise than to rely on an arbitrator to devise a viable solution after the fact.

The Japanese labor relations system and some European systems may be better suited to responding to changing technologies than the U.S. system because they include both blue- and white-collar workers in the same union and in the same election or bargaining units (see Chapter 15). In Japan, for example, **enterprise unions** represent all blue- and white-collar workers in a single firm. In Germany, most industrial unions include both the blue- and the white-collar workers employed in a company and in an industry. In Great Britain, on the other hand, a tradition of separate blue- and white-collar unions and a greater reliance on craft unions makes this problem potentially more troublesome than it is in our country. These issues are important because labor relations systems that make fine distinctions among election and bargaining units may be more likely than others to face difficulty in adapting to the new technologies now spreading across industries.

EVALUATING THE PERFORMANCE OF THE GRIEVANCE SYSTEM

Just as one important measure of the effectiveness of the negotiations process is whether the parties can avoid strikes and impasses, an important criterion for evaluating grievance and arbitration procedures is whether the parties can avoid a heavy caseload. The advantages of settling disputes informally or at the step closest to the site where the problems arise are great.

In fact, although the United States has a tradition of very formal grievance systems in unionized settings, informal practices have emerged at the workplace. Most employee complaints are resolved informally before they become formal grievances. A study by Lewin and Peterson, for example, found that between 16 and 40 percent of the employees in the unionized workplaces they studied reported having discussed with their supervisors (and resolved) a problem about their contractual rights.[15]

However, a low grievance rate may be attributable to the fact that a union is not aggressively enforcing the terms of a contract. For this reason, evaluation of

the use of the grievance procedure should be accompanied by consideration of the reasons for low use.

Time and Costs of Settling Grievances

Two criteria that are commonly used to evaluate grievance procedures are the time it takes to settle claims and the costs associated with processing claims through to arbitration. The original purpose in developing the procedures was to find an expeditious and inexpensive substitute for court procedures. Although the grievance process is still shorter than litigation, the time required to resolve a grievance through arbitration has become substantial. In 2005, the average period between the request for an arbitrator and an award being issued was 401 days for arbitrations administered by the FMCS.[16] To this period must be added an average of 163 days between the initial filing of a grievance and a request for arbitration. Although the average length of employment litigation cases is longer, averaging two to three years, the idea of arbitration as a simple, expeditious procedure for resolving workplace disputes is being lost when grievances take over a year to be decided.

Similarly, the cost of arbitration can be substantial, even though it is generally cheaper than litigation. In 2013, the average total cost of hiring an arbitrator from the FMCS arbitrator list was $4,911.86, based on an average daily fee of $1,023.62 plus expenses and an average of four days for the hearing plus writing the award.[17] Yet hiring an arbitrator is usually only one aspect of the entire cost of resolving a grievance-arbitration case. According to the National Labor Management Association, when a union undertakes all of the steps in a discharge arbitration case, it must account for the grievance process; staff time; the cost of a transcript, hotels, and study time; and the arbitrator's fee. The increasingly common use of lawyers as representatives at arbitration, particularly on the management side, further increases the cost of arbitration. The modern grievance procedure may not be providing inexpensive due process, as it was intended to. At the same time, court litigation to resolve an employment-related dispute can be extremely expensive and is impractical for unions that have budget limitations.

The Effects of Arbitration Decisions

Another important way of evaluating grievance and arbitration procedures is what happens after an arbitrator has reinstated a discharged employee. If the grievance procedure is effective in carrying out industrial justice, a worker who has been unjustly discharged should be able to return to work and both perform well in the job and progress satisfactorily within the company.

The procedure itself, however, may work against these results in several ways. First, the delays involved in processing a case through arbitration may lead a grievant who has been discharged to seek alternative employment. Some reinstated employees therefore do not return to their former jobs. Second, reinstated employees are put back on their jobs frequently against the will of their employers, often to the dismay of their immediate supervisors, and sometimes to the dissatisfaction of their fellow workers. Some reinstated workers face hostility on their return to work. Even if management, supervisors, and fellow workers make a good-faith effort to treat the reinstated employee fairly, the employee may distrust their intentions

or lack the confidence to perform effectively. Some studies have found that employees who have been reinstated do not fit back into the workplace well.[18]

One study showed that grievants in four firms later received lower job performance ratings, had lower probabilities of promotion, and were more likely to experience voluntary or involuntary turnover than employees who had not used the grievance procedure. In addition, the study found that grievants who had appealed their cases to the higher steps of the procedure later had more negative performance and promotion experiences than those who had settled at the lower steps. And employees who had won their grievances—that is, whose grievances were found to be meritorious by either management or an arbitrator—had lower subsequent performance ratings than those whose grievances had been denied by management or an arbitrator. The same negative profile of aftereffects fit the supervisors of grievance filers. Supervisors of grievance filers received lower performance ratings, were less likely to get promoted, and were more likely to experience involuntary turnover than supervisors in a comparison group. This study suggests that grievance filers and their supervisors face considerable risk of retribution for using the procedure.[19]

An obvious implication of this evidence is that both management and union representatives need to pay careful attention to what happens after a grievance is resolved.

Even in the face of the problem of retribution, the grievance procedures serve an important function as a common law of the shop. Management and union representatives often learn from grievance settlements and arbitration awards the appropriate interpretation of contract clauses and then adapt their behavior accordingly.[20]

In sum, the grievance and arbitration processes can have positive effects in which the parties learn a better way of administering a contract or they can have negative effects that involve retribution. Much depends on whether management and labor representatives are committed to the goals the process was designed to foster.

ALTERNATIVES TO THE GRIEVANCE PROCEDURE IN THE UNION SECTOR

The costs and delays associated with the grievance procedure and arbitration have led labor and management to develop innovative procedures designed to reduce excessive delays and costs. Among these alternatives are several minor modifications of existing practices, such as keeping grievances oral as far into the procedure as possible to promote informal resolution, tightening time allowances at various steps of the procedure, and agreeing that oral settlements or settlements at intermediate steps of the procedure will not serve in any way as precedents.

Expedited Arbitration

Expedited arbitration is a type of grievance arbitration in which the parties agree to speed the resolution of disputes. Expedited procedures bypass steps in the normal grievance procedure and impose tight time limits. The specific features

of expedited arbitration vary between contracts, but the following are some common components:

> Pre-hearing suggestions include (1) appointing a panel of arbitrators for the length of the contract rather than working through a new list of arbitrators each time an arbitration is scheduled; (2) appointing a permanent umpire [arbitrator] for a specific amount of time (one year of the life of the agreement, for example); (3) using pre-hearing briefs as a basis for stipulating facts and educating the arbitrator. Hearings may be expedited by substituting tape recordings for transcripts. Post-hearing expedition includes (1) setting a deadline for the award to be returned to the parties; (2) reducing or eliminating the number of citings for the arbitrator to research; and (3) setting a maximum on the length of one page for the award or establishing the maximum amount to be paid for the decision ahead of time.[21]

Labor, management, and arbitrators report positive results from expedited arbitration procedures. A six-year review of the expedited arbitration procedure of the Steelworkers basic steel industry system found that:

1. Oral resolution cut the cost of the average grievance arbitration case.
2. More than half the grievances were resolved before arbitration.
3. The awards almost always conformed to the time limits specified.
4. The procedure has spread to other Steelworkers contracts in the aluminum, can, copper, and metals industries.[22]

Expedited arbitration appears to be one viable strategy for reducing the costs and delays involved in many routine cases.

Grievance Mediation

Another innovation that has gained in popularity as a faster and less expensive alternative to arbitration is **grievance mediation**. In this procedure, a neutral third party is asked to mediate a dispute. The process is typically highly informal and does not involve written transcripts, briefs, attorneys, or written opinions. Rather, the mediator meets with the union and management and then often conducts a series of separate meetings with each party to discern any underlying reasons for the grievance and the possible points of compromise. The hope is that the mediator will be able to mediate settlements in many of the disputes and thereby reduce the frequency of arbitration. Although the decision of the mediator is not binding on the parties, one study found that 89 percent of grievance meditations are settled without the need for arbitration.[23]

A pioneering effort to use mediation to resolve grievances before they go to arbitration was developed and applied in the coal industry by William Ury, Jeanne Brett, and Stephen Goldberg.[24] These authors calculated that the average cost per arbitration case in the industry in 1985 was $1,300, whereas the average cost per mediation case was $309—a savings of roughly $1,000 per case. In addition, over a five-year period, the average time lapse between a request for mediation and the resolution of the case was nineteen days, considerably less time than the average of fifty-two days required to schedule an arbitration hearing and receive

a written award. But even further testimony to the value of grievance mediation can be found in the high levels of satisfaction with the procedure that management, union representatives, and the miners who took part in it reported.[25]

Although research supports the effectiveness of grievance mediation in resolving grievances quickly and at a low cost, estimates suggest only about 3 percent of all contracts contain a mediation step in the grievance procedure. In a review of developments in this area, Peter Feuille argues that the reason for the lack of greater adoption of grievance mediation is the relative strength and robustness of the traditional grievance and arbitration process.[26] Indeed, the relative stability and enduring structure of grievance and arbitration procedures in unionized settings is a striking feature of U.S. labor relations, given the many sweeping changes that have occurred in other areas in recent years.

CONFLICT RESOLUTION IN NONUNION SETTINGS

The absence of a union does not eliminate the need for conflict resolution systems in the workplace. Nonunion employers also often find the need to perform this generic industrial relations function. Over recent decades, many employers have instituted complaint or appeal systems and other communication and conflict resolution procedures for their nonunion employees. These systems and procedures are often the only direct recourse available to nonunion employees who feel they have been treated unfairly in the workplace. However, they are also often less consistent mechanisms for ensuring fair treatment and employee voice than union grievance procedures.

Reasons for Adopting Nonunion Grievance Procedures

As discussed earlier, in virtually all unionized settings, grievance procedures are established to enforce jointly negotiated collective bargaining agreements with the strong encouragement of labor law statutes and court decisions. In contrast, in nonunion settings, management has the sole discretion to decide whether to establish a formal dispute resolution procedure. However, in practice, many employers choose to establish formal grievance procedures for complaints by nonunion employees. There are three major categories of reasons why employers chose to do so.

First, employers may adopt nonunion grievance procedures as part of a management strategy to improve the performance of a work force. The absence of a union does not eliminate the need for conflict resolution systems in the workplace. According to Albert Hirschman's theory, employees who have no effective means to voice their discontent with any inequities they perceive may simply choose to leave the company.[27] Such turnover can be very costly for employers, particularly for those following strategies such as the human resource management pattern discussed in Chapter 5, which involve high levels of investment in the skills, training, and capability of their employees. To the degree that conflict resolution systems can reduce such costly turnover, there will be an incentive for employers to adopt them.

Second, employers may adopt nonunion grievance procedures as part of union avoidance strategies. The introduction of a union grievance procedure that allows a union to enforce the terms of a collective bargaining agreement and provides employees with due process is one of the major benefits of unionization that unions can offer during organizing campaigns. Research has shown that arguments based on justice and fairness are particularly effective during organizing campaigns. Employers who can provide employees with effective nonunion grievance procedures may reduce the desire for union representation and limit the strength of these arguments in an organizing campaign.

Third, employers may adopt nonunion grievance procedures to reduce the risk of litigation from employees. As we discussed in Chapter 3, with the expansion of employment laws in recent decades, there has been a growth in the number of lawsuits filed by employees and an increase in the damages awarded against employers. Nonunion conflict resolution systems can help reduce the risk of litigation for employers by resolving workplace disputes before they turn into lawsuits. Effective grievance procedures may also help reduce the danger of lawsuits by allowing employers to identify managers who are engaging in improper or illegal actions toward employees more quickly and take appropriate corrective measures. Lastly, as will be discussed below, adoption of nonunion arbitration procedures can enable employers to avoid lawsuits entirely and substitute an arbitral forum for litigation to resolve disputes involving employment law.

Types of Nonunion Grievance Procedures

There is wide variation in the incidence and structure of nonunion dispute resolution procedures. While at least half of nonunion firms have formal grievance procedures, many continue to lack any procedures for resolving employee complaints or appeals. Among firms that have adopted nonunion procedures, the structure of these procedures varies widely.

The most basic type of procedure is the "open door" policy, under which employees are simply invited to bring their complaint or concern to a manager who will attempt to resolve it. More formal nonunion procedures for review of employee grievances often specify the person (often a supervisor or lower-level manager) to whom complaints can be brought and the person(s) (generally a higher-level manager) to whom the employee can appeal if they are unsatisfied with the initial manager's decision. More sophisticated systems like this may involve a committee or board of senior-level managers who will review and decide the merits of an employee's grievance and give the employee an opportunity to present his or her grievance in a more formal hearing. A common feature of these types of procedures, however, is that a manager or managers are the final decision makers, not a third-party neutral, as in union arbitration procedures.

Some nonunion firms have begun to adopt nonunion grievance procedures that feature nonmanagers as decision makers. Among these types of procedures are peer-review panels, which use fellow employees as decision makers, and nonunion arbitration procedures, which use third-party neutral arbitrators. Both of these types of procedures will be discussed further below.

Data from the telecommunications industry reveals that dispute resolution procedures appeared with the following frequency in nonunion establishments: no formal procedure (49.5 percent); basic nonunion procedure (20.3 percent); management appeals board (10.8 percent); and peer review and/or binding arbitration (19.3 percent).[28]

In addition to these formal procedures for appealing grievances, some employers have instituted alternative processes for resolving workplace conflict, including **ombudsman** offices, internal or external mediation, "speak up" programs, employee counseling services, and attitude surveys and related communications programs.

Ombudsman offices are an interesting alternative to traditional grievance procedures. The ombudsman is an individual a company employs to help resolve problems, complaints, or conflicts between or among employees, supervisors, and managers. Within the typical structure, the ombudsman reports directly to the office of the chief executive or to the head of the human resource management department. This is done to remove him or her from the general management chain of command. Since the ombudsman's mandate is more open-ended than the mandate for a grievance procedure, ombudsmen play a more varied role in resolving conflicts and often handle a broader range of issues than do arbitrators in the typical grievance procedure. Box 12.5 lists a range of functions the typical ombudsman might perform. The flexibility and informality with which the ombudsman can approach this role is one of its distinct advantages.[29]

Integrated Conflict Management Systems

In recent years, a trend has emerged toward the introduction of integrated conflict management systems. An integrated conflict management system uses a systematic approach to preventing, managing, and resolving conflict that focuses on the causes of conflict. The key features of an integrated conflict management system are provided in Box 12.6.

Many factors are contributing to the development of sophisticated conflict resolution procedures. Complaints by employees against supervisors, peer disputes, complaints that some part of a company is providing poor service, and disagreements among work groups or teams are some of the reasons why organizations feel the need for systematic approaches to conflict resolution. In addition, disputes in the workplace now include complex problems related to matters such as intellectual property, sexual harassment, and conflicts of interest.

Why Nonunion Employees Desire Complaint Procedures

Employees in nonunion firms seek complaint procedures in part because they want a mechanism they can use to challenge discharge decisions. The employment-at-will doctrine that is used in the United States when there is no collective bargaining agreement stipulates that both the employee and employer are free to end the employment relationship at any time, for any reason, and without liability, provided that the termination does not violate any laws.

As we discussed in Chapter 3, in recent years a number of state courts have allowed legal claims based on exceptions to the employment-at-will doctrine.

BOX 12.5
Functions of an Ombudsman

- To give a personal and confidential hearing, to defuse rage, to provide a caring presence to those in grief about a dispute.
- To provide (and sometimes to receive) information on a one-to-one basis.
- To counsel people (confidentially) on how to help themselves by helping develop new options, by problem solving, by role playing.
- To conciliate (that is, to go between parties without bringing them face to face).
- To mediate by bringing parties together face to face.
- To investigate formally or informally, with or without presenting recommendations.
- To arbitrate or adjudicate, although this is a rare function.
- To facilitate systems or procedural changes by recommending "generic" solutions, by providing upward feedback, by writing internal memos, by "management consulting" with institutions, by public reports, by recommendations to legislatures, and by supporting education and training.

The classic language describing most ombuds practitioners is "They may not make, or change, or set aside any law or policy or management decision; theirs is the power of reason and persuasion."

Source: Mary P. Rowe, "Notes on the Ombudsman in the United States, 1986," Cambridge: Massachusetts Institute of Technology, 1986.

Yet even with the gradual expansion of nonunion complaint procedures and the courts' loosening of the employment-at-will doctrine, there is much controversy about whether unorganized employees have an appropriate amount of due process. The importance of this as a public policy issue continues to grow as the percentage of the work force represented by unions declines.

Differences between Union and Nonunion Grievance Procedures

There are important general differences between the procedures for resolving workplace conflicts in union and nonunion workplaces. First, grievance procedures in unionized workplaces are created and operate under rules established in collective bargaining agreements jointly negotiated by the union and management. Nonunion grievance procedures are designed and adopted by management and apply work rules that an employer unilaterally makes. Second, whereas the union represents the employee in a union grievance procedure, the employee typically must represent him or herself under a nonunion grievance procedure. While a unionized employee may in some situations disagree with how the union handles his or her grievance,

BOX 12.6
Integrated Conflict Management Systems

An integrated conflict management system does the following:

- Encourages employees and managers to voice concerns and constructive dissent early
- Integrates a collaborative problem-solving approach into the culture of the company, encouraging direct negotiation between those involved in a dispute
- Provides options for all types of problems for all people in the workplace
- Coordinates a web of options and structures enabling problem solving across areas and functions
- Aligns two conflict management practices with each other and with the mission, vision, and values of the company, thereby contributing significantly to internal culture transformation
- Is understandable to all
- Is flexible and use friendly

Source: "Designing Integrated Conflict Management Systems: Guidelines for Practitioners and Decision Makers in Organizations," report prepared by the Society of Professionals in Dispute Resolution ADR in the Workplace Initiative, Institute for Conflict Resolution, ILR, Cornell University, 2002.

the nonunion employee acting on his or her own typically has no expertise in grievance handling and does not have the negotiating power that union representation could have provided. Third, in most nonunion grievance procedures, it is management that makes the decisions, in contrast to what happens in union grievance procedures, where the arbitrator as a neutral third party makes the final decision. Although in recent years some nonunion grievance procedures have included nonmanagerial decision makers such as arbitrators or peer employees, these types of procedures are found in a small minority of nonunion workplaces. These differences mean that the due process protections for employees in typical nonunion grievance procedures are substantially more limited than those in union grievance procedures.

Impact of Nonunion Grievance Procedures

It has long been recognized that employees are much less likely to use grievance procedures in nonunion than union workplaces. However, employees may be more willing to use nonunion grievance procedures that have some due process protections. A study of employee usage of grievance procedures in the telecommunications industry found that rates of usage varied with the type of procedure. Grievance rates are often measured as the number of grievances filed annually per 100 workers. Looking just at grievances about discipline decisions, in unionized workplaces there was an average grievance rate of 5.3 for each 100 workers,

whereas in workplaces with nonunion grievance procedures the average grievance rate was 2.0 per 100 workers. In the nonunion workplaces, grievance rates were much higher when the procedure included nonmanagerial decision makers: 2.9 per 100 workers for procedures that included peer review and 3.2 per 100 workers for procedures that included arbitration compared to only 1.3 per 100 workers for procedures that used only managers as decision makers.[30]

Critics of nonunion grievance systems argue that an important reason why employees make less use of such procedures is that they fear reprisals. A study by David Lewin of the performance of grievance procedures in three high-technology nonunion firms provides some support for these claims.[31] Lewin found that compared to employees who did not file grievances, grievance filers (and their supervisors) had lower performance ratings, lower promotion rates, and higher rates of turnover in the year after their use of the procedure. Survey responses from two of the firms indicated that approximately one-third of those who did not file grievances chose not to do so because they either feared reprisals or believed there was little chance their appeal would be successful. Thus, it appears the grievants in these nonunion firms exercised their right to use these procedures at considerable risk. If this pattern is at all representative of experiences in other firms, it supports some of the critics' arguments.

Peer Review and Union Avoidance

Conflict resolution systems in nonunion settings may serve important functions for both employees and employers. These procedures can be constructive additions to a modern industrial relations system, but they can also give management a way to control the work force and avoid a union.

Evidence shows that a number of firms have adopted peer review, a particular kind of complaint-resolution procedure, because they found that it was an effective substitute for a union.[32] In peer review procedures, review panels or boards are established to hear employee grievances and make decisions about their merits.

In a peer review procedure, the majority of the members of the panel are peer employees of the grievant. This process "creates two important advantages for the use of peer review panels as union substitution mechanisms. First, because a majority of the final decision makers in the procedure are no longer members of management, the panels promise greater neutrality in decision making. Second, because employees are involved in the procedure, there is some substitution for the representational function of the union in the workplace—albeit only a partial substitute, given that the panel members are not actually presenting the grievance on behalf of the employee."[33]

The history of nonunion grievance procedures has taken an ironic twist: what started as a unique and highly acclaimed innovation designed to deliver due process to employees has been transformed into an employer strategy for reducing employees' chances of achieving union representation and acquiring a truly independent grievance procedure. Thus, like many other human resource management innovations that are driven at least in part by union avoidance motives, nonunion conflict resolution systems are a double-edged sword.

Nonunion Arbitration and Employment Laws

Use of arbitration as a final step has long been a key feature of union grievance procedures. By contrast, until recently use of arbitration in nonunion grievance procedures was much rarer. This changed in the 1990s as employers began adopting arbitration procedures as an alternative to litigation through the courts as a way resolving employees' claims based on employment laws.

Employment litigation costs increased dramatically in the 1960s, 1970s, and 1980s with the passage of various laws that protected workers, a shift in some state courts toward recognition of some common-law protections against wrongful dismissal, and occasional high damage awards to plaintiffs in disputes over discrimination and other claims. This produced a strong desire by firms to reduce litigation costs and avoid court actions where possible.

The impetus for the use of arbitration as a mechanism to avoid the risks and costs of litigation came from a shift in the courts toward favoring arbitration as an alternative way of resolving claims based on employment statutes. In its 1991 decision in *Gilmer v. Interstate/Johnson Lane* (1991), the U.S. Supreme Court ruled that a dispute based on a statutory employment right was subject to arbitration. Expanding upon the *Gilmer* decision, courts have ruled that disputes involving a wide variety of employment rights, including cases involving discrimination based on race, sex, age, and disability, are subject to the arbitration clauses in the employment contracts of nonunion employers. In 2001, the Supreme Court reaffirmed its support for arbitration with its ruling in *Circuit City v. Adams*, which upheld the enforceability of an arbitration agreement that Circuit City required its employees to sign.

Employers that adopt arbitration procedures to resolve potential employment law claims typically require employees to sign an agreement that they will arbitrate potential legal claims against the employer as a mandatory condition of employment. The potential employee can choose not to sign the arbitration agreement, but the employer will then no longer offer the potential employee a job. For this reason, these procedures are often referred to as "mandatory arbitration." These contracts are generally enforced by the courts, much as "take-it-or-leave-it" contracts are enforced in many other areas (e.g., contracts with rental car companies or apartment lease contracts).

In *Equal Employment Opportunity Commission (EEOC) v. Waffle House, Inc.* (2002), the Supreme Court limited the applicability of the *Circuit City* decision. The Court ruled that the EEOC has the right to pursue judicial relief for a victim of employment discrimination even when the individual has signed a binding arbitration agreement with his or her employer. The EEOC can still seek relief such as back pay, reinstatement, and damages for victims of employment discrimination. Even after this ruling, the *Gilmer* and *Circuit City* decisions still limit an employee's ability to dispute unfair work rules and treatment in the courts. Unless the EEOC pursues discrimination-related cases on behalf of employees, which it has the resources to do in around only 1 or 2 percent of all cases, employees can be forced to resolve an employment rights complaint through arbitration.

Mandatory arbitration spread rapidly in the wake of the *Gilmer* and *Circuit City* decisions. Mandatory arbitration was very rare before the 1990s, but estimates suggest that by the mid-2010s around a quarter or more of workplaces had mandatory arbitration procedures in place.[34] The practical significance of the enforcement of mandatory arbitration clauses is that they divert employment rights disputes, including discrimination cases, into an employer-designed arbitration procedure. As a result, there has been much debate about the fairness of mandatory arbitration procedures and various proposals have been made to increase their due process protections.

Debates over Mandatory Arbitration

Advocates of mandatory arbitration argue that it provides a faster, more efficient mechanism for resolving employment law claims. They point to the lengthy delays and high costs of litigating employment claims through the courts and argue that arbitration provides a better, more accessible mechanism for resolving these claims for both employers and employees. Comparisons find that while the average employment discrimination case takes 709 days to be resolved in the federal court system, similar cases take an average of 361 days to resolve in arbitration.[35] Advocates argue that the simplified procedures of arbitration are more appropriate for resolving routine employment law disputes and that they retain enough due process protections to ensure protection of the employee's statutory rights.[36]

Critics of mandatory arbitration argue that employers have too much control in such procedures, that they suffer from potentially biased arbitrators, and that they move the adjudication of public employment law claims from the public forum of the courts to a private forum. Since employers are the ones who design mandatory arbitration procedures and since they offer them to potential employees on a take-it-or-leave-it basis, critics worry that such procedures will include features that systematically bias them in favor of the employer, such as rules concerning who can serve as the arbitrator, limitations on access to the information needed to resolve the claim, and restrictions on how the employee can present his or her claim. In a colorful analogy, Katherine Stone described mandatory arbitration agreements as a modern version of the yellow-dog contracts that many employers required workers to sign promising that they would not join a union until the practice was outlawed in the Norris-LaGuardia Act of 1932.[37]

Another major concern of critics is that employers will have a systematic advantage in arbitration because arbitrators will tend to favor the employer in the hope of being selected to decide future claims. A study of employment arbitration decisions found that where the employer had multiple cases before the same arbitrator, the employer's chances of winning the case increased by 6.2 percent for each additional case the employer had with the same arbitrator.[38]

Due Process Models and Controversies

While controversies and debates over the enforcement of mandatory arbitration procedures continue, there have also been efforts to establish models of which

due process protections should be included in arbitration procedures used to resolve statutory claims. In 1994, the U.S. Department of Labor's Commission on the Future of Worker-Management Relations (the Dunlop Commission) proposed a set of seven standards of fairness in nonunion arbitration:

a) A neutral arbitrator who knows the laws in question and understands the concerns of the parties;
b) A fair and simple method by which the employee can secure the necessary information to present the claim;
c) A fair method of cost-sharing between the employer and employee to ensure affordable access to the system;
d) The right to independent representation if the employee wants it;
e) A range of remedies equal to those available through litigation;
f) A written opinion by the arbitrator explaining the rationale for the result; and
g) Sufficient judicial review to ensure that the result is consistent with the governing laws.[39]

In 1995, a task force established by the American Bar Association's labor and employment law section, which included representatives from both employer and employee groups, developed a similar but more detailed Due Process Protocol for arbitration procedures to resolve statutory claims. Subsequently, the American Arbitration Association (AAA) announced that it would follow procedures based on the recommendations contained in the Due Process Protocol in any employment arbitration cases it administers.[40] This is important because many employers decide that instead of developing an arbitration procedure entirely on their own, they will contract with the AAA to provide the arbitrators and run the arbitration hearings under its rules.

Research indicates that even when mandatory employment arbitration is conducted under rules such as the AAA procedures, which provide more substantial due process provisions than is the case in employer-crafted procedures, employee outcomes from arbitration are less favorable than they are in litigation. A study of employment arbitration cases found that the average amount award to employees across all cases (including wins and losses) was $23,548 (in 2005 dollars). By contrast, using the same measure, average employee recoveries in studies of federal court case outcomes was $143,497 and in state courts $328,008.[41] Complex research issues are involved when comparing arbitration and litigation outcomes, but these broad comparisons suggest that employees recover much greater amounts in the courts. This gives employers a powerful incentive to adopt mandatory employment arbitration procedures.

The most recent controversy relating to mandatory arbitration is the inclusion of class-action waivers in arbitration agreements. In *AT&T v. Concepcion* (2011),[42] the Supreme Court ruled that an arbitration clause could require that any case be brought individually, effectively barring the plaintiff from participating in a class action. Although this case dealt with a consumer claim, it has also been applied in employment cases. This ruling give employers a way to use employment

contracts to protect themselves from class actions if they include a class-action waiver in the arbitration agreement they require their employees to sign.

There is currently uncertainty about the effect of class-action waivers in employment arbitration agreements due to an NLRB decision in the case of *D. R. Horton, Inc.* (2012).[43] Under section 7 of the NLRA, employees have the right to engage in concerted action for mutual aid and protection. In its *D. R. Horton* decision, the NLRB held that the employment arbitration agreement the employer had required had violated the employees' right to engage in concerted action by filing a class action and that because of this, the class-action waiver was unenforceable. Subsequent circuit court decisions have split on whether to accept the NLRB's interpretation that the employees' section 7 rights preclude enforcement of class-action waivers. It is likely that a Supreme Court ruling will be necessary to resolve this conflict. This case illustrates how issues of labor relations are increasingly spilling over into the realm of nonunion employment relations and employment laws.

Summary

Grievance procedures historically have been the centerpiece of the day-to-day administration of the collective bargaining agreement. The grievance procedure provides a mechanism for settling disputes that arise during the term of a collective bargaining agreement. The grievance procedure typically includes steps involving successively higher-level union and management officials. The union has the right to decide if it wishes to push an unsettled grievance to a higher step.

The grievance procedure has been hailed as one of the most innovative features of the U.S. industrial relations system. The centrality of the role it played in the past is attributable in part to the understanding that it was management's job to manage and the union's job to grieve.

Collective bargaining agreements in the United States are elaborate documents that often include highly detailed job descriptions. The existence of such elaborate labor contracts contributed to the need for an orderly way of settling conflicts over interpretations of contract language.

Binding arbitration by a third party is the common device used as the final step of grievance procedures. Arbitrators commonly consider past practice at the workplace, the intent of the parties during contract negotiations, and fairness when they fashion awards. In discipline cases, arbitrators generally require progressive and corrective discipline.

The centrality of formal grievance and arbitration procedures is now being challenged by recent developments. The combination of a need for greater adaptability and competitive pressures has led some unions and managements to simplify how conflicts are settled. The expansion of workers' involvement in business and strategic decisions has led labor and management to rely less on the grievance procedure to solve problems. An effective industrial relations system in union settings now must be more than simply a grievance procedure. To keep in step with the times, the system must combine the strengths of a well-functioning

grievance procedure with mechanisms for solving problems informally and for improving communication.

Conflict resolution procedures are also important in the nonunion workplace. Employers are motivated to adopt them for a number of reasons, including reducing turnover, avoiding unions, and avoiding litigation. Nonunion conflict resolution procedures come in a greater variety of forms than union grievance procedures. Some include structures such as peer review panels and ombudsman offices.

Mandatory arbitration of employment claims is a growing and controversial practice in the nonunion workplace. Mandatory arbitration agreements that employers impose as a condition of employment effectively bar employees from going to court and require them to arbitrate all disputes with the employer, even claims under statutes such as Title VII of the Civil Rights Act.

Advocates argue that arbitration of employment disputes is faster, cheaper, and more accessible for employees. Critics note that mandatory arbitration is unilaterally imposed by employers and often lacks due process protections. they point to empirical evidence that it produces worse outcomes for employees than litigation and is plagued by problems such as bias in favor of employers when the employer uses the same arbitrator repeatedly. Recent concerns have focused on the enforceability of class-action waivers in mandatory arbitration agreements.

Discussion Questions

1. Describe the typical steps followed in a grievance case.
2. Name the groups the grievance process meets the needs of and discuss how the grievance arbitration procedures help meet their respective needs.
3. What are some of the alternatives to the grievance arbitration process in unionized workplaces?
4. What are some of the techniques nonunion firms use to resolve conflict?
5. Describe the debates concerning whether nonunion arbitration procedures should be used to resolve disputes about employment laws.

Related Websites

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http://www.fmcs.gov

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PART V

Special Topics

13. Collective Bargaining in the Public Sector
14. Global Pressures: Multinational Employers, International Unionism, and NGOs
15. Labor Relations in Other Countries
16. The Future of U.S. Labor Policy and Labor Relations

13 Collective Bargaining in the Public Sector

THE SPREAD OF UNIONISM IN THE PUBLIC SECTOR

Collective bargaining spread rapidly in the public sector in the United States in the early 1960s. Today, more than one-third of all employees of federal, state, and local governments are represented by a union. In 2016, 40.3 percent of local government employees and 29.6 percent of state government employees were members of unions.[1] This alone makes unionism in the public sector worthy of a separate chapter in this book, especially at a time when each year a smaller fraction of private sector employees have union representation.

This chapter examines labor relations in the public sector. However, the public sector is a special case of bargaining and employment practice. Governments are not just employers and providers of services; they are also providers of public services. Because of this, the public sector bargaining system must be particularly responsive to the demands of the public.

There has been much debate about the appropriate legal regulation of public sector collective bargaining. Some analysts have argued that the unique nature of governments as employers makes collective bargaining as it traditionally practiced in the private sector inappropriate for the public sector. Other observers would allow the traditional type of collective bargaining, but in a form that has been adapted to meet the special circumstances of the public sector. Another consideration is that in some states, public sector union membership has dropped significantly recently, for example, in Wisconsin.[2]

The first section of this chapter examines the historical phases of public sector bargaining. The sections after that review the practice and outcomes of public sector bargaining and consider how bargaining in the public sector compares with bargaining in the private sector. The text then considers whether the legal regulation of public sector unions should be different from that of private sector bargaining.

THE EVOLUTION OF PUBLIC SECTOR COLLECTIVE BARGAINING

Public sector labor relations have undergone several different eras in the United States, growing in some periods with much public support but being called into question in others.

The 1960s and Early 1970s: The Era of Growth

The percentage of all federal, state, and local government employees who were members of unions increased significantly in the 1960s and early 1970s, rising from 12.8 in 1960 to 20.6 in 1974. By the 1970s, other public sector employees joined associations, such as the National Education Association, many of which also engaged in collective bargaining. By 1974, 37.7 percent of all public sector employees were members of a bargaining organization (whether it was a union or an association that engaged in collective bargaining). The extent of unionization in this sector has stayed at a high level since then.

Factors that contributed to the expansion of public sector unionism in the 1960s and 1970s included the growth in the size of government budgets throughout the 1960s and early 1970s, the example of civil disobedience that civil rights and other groups set in the 1960s, and the passage of laws favorable to public sector collective bargaining.

The Mid- and Late 1970s: The Taxpayers' Revolt

The economic environment for public sector bargaining, however, tightened sharply in the mid-1970s because of slowdowns in the economy and in response to a wave of political conservatism. Many conservatives questioned the value of many government expenditures, and some state and local governments began to face major fiscal problems. In addition, taxpayer resistance to public expenditures created a backlash against public employees and reduced the political influence of public sector employee organizations.

New York City, the prime example of the fiscal crises of the cities in the 1970s, hovered on the brink of bankruptcy for several years. Eventually, the city accepted an emergency financial control board composed of representatives of the state government, the private sector, unions, and the federal government.[3]

Other cities faced similar fiscal crises. In the fall of 1975, voters in San Francisco altered municipal procedures in ways that reduced the income and benefits of city employees.[4] Wage and pension-setting procedures were modified and city craft workers received large pay cuts. Those craft workers then went on strike but were resoundingly defeated; they returned to work a month later under management's salary terms.

Although public sector employers grew more resistant to union demands in the mid- and late 1970s, they did not aggressively try to remove unions. This contrasts with the more recent actions taken in several states to eliminate the right of public employees to bargain for higher wages.

The Early 1980s: The PATCO Strike

The one important exception to union stability in the public sector in this era was the experience of the Professional Air Traffic Controllers Organization (PATCO). In August 1981, PATCO struck. The controllers wanted their employer, the federal government, to increase their wages and benefits. President Reagan fired the strikers on the grounds that they had violated a no-strike clause in their employment contracts. The government called in military controllers who, along with supervisors and some controllers who crossed picket lines, kept the air traffic system functioning (though limits were imposed on certain flights).

The Federal Labor Relations Authority eventually decertified the union. (In 1987, the new controllers voted in a new union.) Some analysts argue that the firing of the controllers had enormous ramifications by legitimizing a hard line in bargaining among other public and private sector employers. During the Clinton administration, the strikers were offered their jobs back and a few of them returned to work.

The Mid- and Late 1980s: Institutional Stability and Some Gains

The firing of PATCO strikers may have contributed to the wave of concessionary bargaining that occurred in the private sector in the 1980s. However, it is important to note that public sector collective bargaining underwent a relatively calm period in the 1980s. In part, this stability was the result of the absence of extreme economic pressures.

By the mid-1980s, the political tide had begun to turn again in favor of the public sector. Some politicians and observers claimed that cutbacks in government spending had gone too far. At the same time, public attention was turning to the problems in primary and secondary education in the United States. Many newspaper editorials argued that weaknesses in the nation's schools, particularly compared with Japanese schools, were contributing to the country's problems with trade and competition. The Carnegie Commission issued reports charging that public education was inadequate and that part of the solution would be to upgrade the salary and status of public school teachers.[5] The fact that school districts were having difficulty recruiting science and math teachers because of competition from the computer industry seemed to support the Carnegie Commission's analysis.

The 1990s: Reinventing Government

In the 1990s, the public sector came under intense pressure to improve its performance and shrink its size. In that decade, many of the calls for government reform came from formal reviews or commissions, which often called for a reinvention of the public employment system to address alleged excessive bureaucratization and inefficiencies. Interestingly, some these performance reviews concluded that reform programs should empower the public sector work force through partnerships with unions. A report of a task force of the U.S. secretary of labor noted that "from school house to fire house, a growing number of state and local governments are forming cooperative workplace partnerships in an

effort to transform their public agencies into flexible, customer-responsive organizations better equipped to serve citizens."[6] The task force also observed that work restructuring in the public sector had "major parallels" to efforts under way in the private sector.

Calls to reinvent government often were accompanied by efforts to downsize the public sector payroll through privatizing public services (a public sector version of the increased outsourcing that was occurring in this period in the private sector).

2000–2016: Intensified Attacks on Public Sector Unions and Collective Bargaining

Over the last several years, some state and local government political leaders and commentators have called for sharp limits on the collective bargaining rights of public employees and the unions that represent those employees. These calls have been bolstered by claims that public employees are overpaid and that their allegedly overly generous pension benefits are unsustainable. In several states, new laws to eliminate or limit public sector collective bargaining and union rights have been enacted or proposed.[7] Politics is the critical driver of developments in Wisconsin and other jurisdictions that call into question the future strength of public employees and their unions. The rights of public employees and their unions have been challenged by the political actions of figures such as Governor Chris Christie in New Jersey and Governor Scott Walker in Wisconsin. These legislative actions have followed have raised concerns about the future of public sector labor relations.

THE LEGAL REGULATION OF PUBLIC SECTOR UNIONISM

Federal, state, and local government employees are all excluded from coverage under the NLRA. Separate legal regulations govern collective bargaining in each of these sectors. Collective bargaining coverage exceeds union membership in jurisdictions where employees who are covered by a collective bargaining agreement are not members of a union, a situation that is much less common in the private sector.

FEDERAL EMPLOYEES

Federal employees received the right to unionize and to negotiate over employment conditions other than wages or fringe benefits through Executive Order 10988, which President Kennedy signed in 1962. This order was subsequently extended and expanded by President Nixon in Executive Order 11491.

In 1970, as part of its effort to reform the postal service, Congress gave postal service employees the right to engage in collective bargaining over wages, hours, and working conditions. In 1978, Congress replaced the executive orders of

Presidents Kennedy and Nixon with the first comprehensive federal law to give collective bargaining rights to federal employees. This law, however, excluded pay and fringe benefits from the scope of bargaining.

Collective bargaining in the federal sector is now regulated by the Federal Labor Relations Authority. The Federal Services Impasse Panel is responsible for resolving impasses. It may use mediation, fact finding, or arbitration to resolve disputes. Federal employees are prohibited from striking by the NLRA.

STATE AND LOCAL GOVERNMENT EMPLOYEES

As of 2016, all but nine states had legislation that gives at least some state or local government employees the right to organize and to bargain collectively. Of these 41 states, 24 have passed comprehensive laws that cover certain occupational groups. The states that have not yet enacted public sector bargaining laws are primarily located in the South.

Comprehensive collective bargaining laws for state and local employees were first passed in fifteen states in the late 1960s and early 1970s. In the 1980s, in contrast, only two states, Illinois and Ohio, passed such laws and in the 1990s only New Mexico did so. In recent years, some state laws have been amended to expand the scope of collective bargaining to include new issues, to cover new employee groups, to strengthen the agencies charged with administering the laws, or to modify dispute resolution procedures.

Public sector unions can exert influence even in the absence of the right to bargain. For instance, public sector unions already operate effectively as associations that represent the interests of professional employees in some states that lack collective bargaining laws (e.g., the National Education Association in North Carolina), and they often work in alliance with major professional associations.

Legal Regulation of the Right to Strike

No state gives public employees a right to strike that is equivalent to the right the NLRA specified for private sector workers. However, some states give such workers a limited right to strike.[8] Colorado, for example, permits strikes by all public sector employees, and in Pennsylvania nonuniformed employees have a more limited right to strike if they do not endanger the public health, safety, or welfare of its citizens.

Some states do not allow any public sector strikes and some impose harsh penalties on public sector strikers. In New York, for example, the **Taylor Law** mandates a "two for one" penalty under which a striking employee is penalized one day's pay for each strike day in addition to the day's pay the employee loses while striking. Under the Taylor Law, the struck employer is responsible for collecting the monetary penalty and keeps the money raised by the strike penalty. Yet even with these penalties, strikes do periodically occur in the New York public sector.[9] New York is not the only state where public sector strikes sometimes

occur even though state laws make those strikes illegal. However, strike penalties appear to reduce the frequency of strikes.

The Bargaining Rights of Supervisors

The bargaining rights of supervisors differ substantially in the public and private sectors. Most state laws do not exclude public sector supervisors from collective bargaining. This policy conflicts with the restrictions in the Taft-Hartley Act on the involvement of supervisors in union activity in the private sector. Some state laws require supervisors to form separate bargaining units from rank-and-file employees, however.

Why are public sector supervisors treated differently? Unlike in the private sector, where supervisors are assumed to have the authority to make independent judgments about critical personnel functions, in the public sector many of those functions are handled by a civil service commission. In addition, there are many more levels of supervisors in public sector hierarchies, and many individuals with the title of supervisor do not serve as bona fide supervisors. Although not everyone agrees that public sector supervisors should be treated differently, to date the law has evolved differently in that sector.

Calls for Federal Legislation for State and Local Employees

The failure of the remaining states to give collective bargaining rights to public employees has spurred calls for federal legislation to extend bargaining rights to all public employees. Movement on this issue has been blocked by two obstacles. The most formidable is the constitutional question of whether the federal government has the authority to mandate collective bargaining legislation that covers state and local employees. A second major obstacle has been the inability of various labor unions to agree on the form the legislation should take. Three different approaches for federal regulation of public sector collective bargaining have been advocated:

1. A simple extension of the National Labor Relations Act and the jurisdiction of the National Labor Relations Board to cover state and local employees.
2. Special comprehensive legislation that takes into account the unique characteristics of public employees.
3. A minimum-standards law of collective bargaining rights for state and local employees that would leave the specific form of the legislation to the states.

Like its private sector counterpart, public sector collective bargaining is influenced not only by collective bargaining legislation but also by other regulations in state and federal statutes. Chief among these are the laws that govern taxation. Also important are civil service laws and procedures. One of the more difficult issues that has arisen in the public sector, as collective bargaining has spread, is how to resolve conflict between the rights that collective bargaining laws give public employees and the provisions of other laws.

THE SOURCES OF BARGAINING POWER IN THE PUBLIC SECTOR

While the same three key types of bargaining power that exist in the private sector also exist in the public sector—total, relative, and political power—there are some key differences in the nature and role of these power sources between the two sectors. Total power in the public sector is determined by the revenue (i.e., tax revenue, revenue sharing, and fees for services) available to the parties to be distributed between labor and management in a manner analogous to the role of profits in a private sector negotiation. Also, both strike leverage and the elasticity of demand for labor are critical determinants of relative bargaining power in the public sector, even though the strength of their influence is altered by the particular circumstances that are common in public sector labor relations. For one thing, the fact that public sector employees do not commonly have the legal right to strike reduces, but does not eliminate, the leverage public employees gain from a strike action or strike threat. Some public employees do have the legal right to strike. Even more important is the fact that the absence of the legal right to strike does not prevent strikes from occurring or prevent strike threats from being meaningful.

Where binding interest arbitration (referred to in other countries as compulsory arbitration) is the impasse resolution procedure, the threat of turning to that process creates leverage for public sector workers during negotiations, even if the arbitration process is not actually called into play to settle a negotiation.[10]

The elasticity of demand for labor is also a key determinant of relative bargaining power in the public sector as workers and unions in the public sector are likely to consider the trade-off between improvements in contract terms and the number of jobs as they assess whether to use their ability to press for improvements in compensation. Given the fact that public sector workers provide crucial and specialized services to the public, alternative sources of providers are typically much more limited in the public sector than they are in the private sector. Thus, the demand for labor tends to be more inelastic in the public sector than it is in the private sector. In particular, international sources of supply are more limited for public services, although the availability of private domestic sources can significantly increase the elasticity of demand. We address the factors that influence relative power more fully in the next section by analyzing the role of Marshall's conditions. It would be helpful to compare and contrast the discussion of Marshall's conditions with the discussion of those conditions in the private sector in Chapter 3.

How Marshall's Conditions Operate in the Public Sector

Alfred Marshall's first condition states that employees have more bargaining power (face a smaller reduction in employment from an increase in wages) when it is difficult for management to substitute other factors of production for employees. On this score, public employees, on average, should have more bargaining power than private employees do. It is difficult, for example, to substitute machines for public school teachers or police and firefighters.

Some substitution of capital for labor is feasible even for public services: computers can at least partially substitute for teachers, police can acquire more cars and other equipment, and firefighters can use more and better equipment. Nevertheless, public employees probably have some advantage because of the relative difficulty of finding effective substitutes for them.

Marshall's second condition concerns how price affects the demand for the final good. Here again public employees, on average, should have an advantage over most private employees. Governments are typically the sole providers of public goods or services. A public employer cannot typically go out of business or move to some other area to escape higher labor costs. As a result, the demand for many public goods is not strongly influenced by price.[11] This makes public employment relatively insensitive to increases in wages.

Marshall's third condition concerns what happens to the price of substitute factors of production if the demand for them increases. Here there is no clear difference between the public and private sectors.

With regard to Marshall's fourth condition, the fact that increases in labor costs will not lead to large reductions in employment if labor costs are a small share of total production costs, public employees are likely to be at a disadvantage. In most cases, labor costs constitute a substantial share of total production costs. The ratio of labor costs to total costs varies in the public sector from a high of around 90 percent in police and fire departments to a low of 60 to 70 percent in education and other public services. This means that wage increases have a significant effect on total increases in government budgets. Labor costs are a prime target when the public demands lower taxes and lower expenditure levels. In the long run, then, the high percentage of labor costs to total costs may act as a major impediment to the power of public employee unions.

In the context of the public sector, Marshall's conditions predict that the demand for public services is relatively uninfluenced by the price of those services and that increases in labor costs should lead to relatively small declines in employment.

Shifts in the Demand for Public Services

Marshall's conditions concern the responsiveness of employment to wage changes in the short term when other environmental influences on bargaining power are constant. The bargaining power public employees had after the mid-1970s and then again in the 1990s, however, was limited by the fact that economic pressures were building. Tax revenues were declining in some jurisdictions, and the public wanted governments to be more efficient. These pressures led to cutbacks in government expenditures. The public's demand for more efficient government services was, in part, a product of the public's reaction to the increase in relative earnings public employees had received earlier

The taxpayers' revolt was to some extent a delayed "price effect." The public was more intensively demanding that government be more efficient in response to the rising cost of those services. Thus, the long-term demand for labor in the public sector is much more elastic than the short-term demand for labor.[12] It just

takes a while for politicians to reduce employment levels significantly in response to wage increases.

Strike Leverage for Public Sector and Private Sector Workers Compared

The strike leverage of public employees is influenced by their ability and willingness to sustain income losses during a strike. Just as in the private sector, striking employees in the public sector rely on alternative sources of income, such as temporary jobs or the earnings of other members of the household. The critical factor for public employees is the high penalty they face if they choose to strike.

In the private sector, an employer's willingness to continue a strike is heavily influenced by a company's ability and willingness to sustain the income losses that result from the shutdown in production and sales during the strike. In the public sector, income is not necessarily tied to sales and production. Public agencies typically collect revenue through taxes and do not charge explicitly for services.[13] Thus, during a strike, a public employer generally continues to receive revenue and is not under pressure to agree to the strikers' demands because of fear of potential bankruptcy. Public agencies also do not typically face competitors who may continue to produce during a strike and strip the struck employer of customers. This absence of a link between strikes and employer revenues clearly works in favor of public employers during strike situations.

While a public employer will not lose income during a strike, a strike can certainly anger the employer's constituents, namely, the public. The public is sometimes hard pressed to do without certain public services, such as police and fire protection, education, and hospital services. These are essential services. Few substitutes for these services can be made available quickly and the absence of these services can create hardships and, in some cases, health risks for the public.

Public services vary substantially in the degree to which they are essential. While it is clear that police and fire protection are essential services, do city clerks and engineers provide essential services? Parents may vocally complain when schools are closed by striking teachers, but there is rarely a public outcry when social workers strike.

In addition, how the public reacts to strikes varies significantly over time. In the late 1960s and early 1970s, public agencies did not often push back against the demands of striking public employees. However, in the mid- and late 1970s and again more recently, some taxpayers seemed eager to confront striking public employees as part of their efforts to lower taxes and the cost of government. The public's willingness to sustain public sector strikes seems to sway with the political and economic winds.

Public Sector Bargaining Structures

Key aspects of bargaining structure are the degree of centralization of employer interests in the formal bargaining structure and the breadth or scope of employee interests in bargaining units. Collective bargaining in the public sector is highly decentralized. Almost all bargaining is done on a single-employer basis; that is,

with a particular government or agency. There are only a few isolated examples of formal multiemployer bargaining.

Several factors have contributed to the continuation of decentralized bargaining in local governments. The diverse financial conditions that exist in local governments make both employers and unions hesitant to consolidate bargaining units. Another pressure that limits centralized bargaining is that local governments like to have autonomy in decision making.

However, information sharing and informal coordination do occur across state and local governments. As public sector bargaining has grown, so has the number of organizations of labor relations professionals in the public sector. These groups share information and conduct surveys to assist one another in the conduct of their separate negotiations.

There has been some recent movement toward greater centralization in the financing of public education. If this continues, it may lead to greater centralization in teacher bargaining. The pressure to centralize school financing comes from court rulings that heavy reliance on local property taxes to fund public education violates state constitutions. Box 13.1 describes several state court decisions on New York school financing that requires greater state support for schools in districts that have relatively low property wealth. In recent years, some state governments have shifted toward state sales or income taxes to replace the local property tax. As a result, public school financing is becoming more centralized and may become substantially more centralized if the court decisions described in Box 13.1 spread. As school financing becomes more centralized, it is likely that collective bargaining structures in the education sector will also become more centralized. Imagine how awkward it would be if bargaining over public school teacher contracts continued at the local school district level in states where most school funding comes from state government. This is an issue worth watching in the future.

BOX 13.1
The Financing of New York Public Schools

In 1982, the New York Court of Appeals (the state's highest court) ruled that the state constitution entitled all students to a "sound, basic education." This deceivingly straightforward judgement became the basis of a legal battle that has lasted for sixteen years, through the administrations of three New York City mayors.

The Campaign for Fiscal Equity sued New York State in 1993, arguing that many school districts were underfunded to the extent that they deprived students of their constitutional rights. The campaign was a community-based group of parents, educators, and social activists concerned with the poor conditions of city schools.

The campaign won an initial victory in January 2001, when the New York State Supreme Court ruled in its favor, agreeing that additional funding was required to provide adequate education based on the rights the state

constitution stipulated. In June 2002, though, the Appellate Division of the state supreme court overruled the initial decision, claiming that "society needs workers in all levels of jobs, the majority of which may very well be low level," and that an eighth grade reading level is sufficient to perform the civil duties a state education prepares students for. Then in 2006, the state's highest court, the court of appeals, ruled in favor of the Campaign for Fiscal Equity. The court ruled that the state was required to increase funding of the city schools, but only by $1.9 billion, significantly less than the $4.7 billion the lower court had ruled necessary.

However, this did not put an end to the matter. In 2014, the campaign and other reform groups threatened to open new suits against the state for not allocating the court-ordered funds to several schools (some of which are in New York City), in compliance with the 2006 judgement. The issue has become entangled in a battle between New York City mayor Bill de Blasio and Governor Andrew Cuomo over who controls the New York City schooling system. The governor has sought to tie reform funding to increased state control of failing schools, in tandem with the implementation of new teacher evaluation criteria. In 2015, the courts gave Mayor de Blasio an extension of one year to demonstrate that his policies of community-based control would result in measurable improvements in the schools.

Sources: "Campaign for Fiscal Equity v. State of New York," Brennan Center for Justice, New York University School of Law, November 20, 2006, https://www.brennancenter.org/legal-work/campaign-fiscal-equity-v-state-new-york; David Herszenhorn, "N.Y. Is Ordered to Pay $1.93 Billion for City Schools," *New York Times*, November 20, 2006.

The Scope of Bargaining Units

Bargaining in the public sector tends to follow occupational lines more than is the case in the private sector. A city government is likely to have separate bargaining units for police officers, firefighters, blue-collar workers (either in one citywide unit or in separate departmentwide units), and various professional groups. Public schools tend to have separate units for teachers, clerical and secretarial employees, bus drivers and maintenance workers, and school principals.

The rivalries that separate police and firefighters in many cities effectively limit the potential for coalition bargaining with these two groups. Nevertheless, in the vast majority of municipal governments, the wages and fringe benefits of police and firefighters are tied to each other through pattern bargaining.

MULTILATERAL MANAGEMENT STRUCTURES IN THE PUBLIC SECTOR

Managerial authority and responsibility are widely shared in the public sector. As a result, collective bargaining in that sector is multilateral, not bilateral, as it is in the private sector.

Consider the typical elementary (or secondary) public school district. Each of the following groups has some managerial role to play in any collective bargaining that exists between the school district and its employees: the district superintendent; the professional industrial relations administrators who report to the superintendent; the elected school board; the mayor of the city where the district is located; the citizens who approve school tax measures and elect the school board; the parent groups active in the community (including the PTA); the state legislature and the state governor, who regulate state education aid; the state education department officials who regulate school programs; the federal education department officials who regulate school expenditures and school programs; and possibly other parties.

Not only is managerial authority divided among numerous actors, there also tend to be substantial differences in the goals of the various public sector managers. This is because public sector organizations usually lack a clear hierarchy of decision makers who can facilitate internal conflict resolution. Conflicts between the mayor and the city council, for example, are as likely to occur in collective bargaining as they are over other political issues. The consequence is that the internal conflicts in management's ranks frequently spill over into the formal negotiations process.[14]

Given this complex array of managerial interests and the diffusion of power, the role of the management negotiator in the public sector is a difficult one. Like the representative of any employer, the management negotiator must both coordinate the interests of the public sector employer and represent the employer in its dealings with the union. The more internal diversity there is and the more power is shared among different individuals, the more difficult the job of internal coordination becomes.

When unions have considerable access to elected officials, the management negotiator may find it particularly difficult to hold elected officials together as a united management team.

The Negotiations Process in the Face of Multilateral Bargaining

Multilateral bargaining is a negotiations process that includes more than two distinct parties. In multilateral bargaining, no clear dichotomy exists between the union and the management organization. This type of bargaining leads to novel bargaining techniques. One frequently observed union tactic in public sector negotiations, for example, is the "end run," in which union officials try to sidestep the formal management negotiating team and take their proposals before an alternative group—city council representatives, school board officials, or even the city or state legislature. As the teachers' strike in Chicago illustrates (see Box 13.2), local public sector disputes often involve a variety of actors, including citizens, mayors, city councils, and the courts, all of whom have a stake in the issues in dispute. In the Chicago teachers' strike, the support teachers received from the public clearly helped strengthen their bargaining position.

Another form of multilateral negotiations occurs when a decision-making group rejects a negotiated agreement and refuses to implement it. Civil service commissions, school boards, or city councils, for example, often must ratify the final

BOX 13.2
A Chicago Teachers' Strike

In 2011, Chicago Mayor Rahm Emmanuel faced a strike by the Chicago Teacher's Union (CTU) only months before the reelection campaign of his former boss, Barack Obama, who had long relied on labor as a decisive ally. These events nicely illustrate the multilateral political pressures that commonly influence public sector labor relations.

Illinois state legislation gave teachers the right to strike, with the condition added in 2011 that 75 percent of the relevant bargaining-unit members had to formally vote in support of a strike for a strike to be legal. On June 11, 2012, 90 percent of Chicago teachers voted to authorize a strike if negotiations reached an impasse. A key aspect of multilateral bargaining is the fact that public attitudes play a critical role. The CTU was bolstered by a poll that found that 47 percent of Chicago residents supported the strike.

The key issue that led to an impasse in bargaining between the teachers' union and the city was not wages but the way teacher performance was evaluated and policies about class size and the length of the school day. The city had implemented a new teacher evaluation system that closely tied evaluations to student scores on standardized testing in order to conform with President Obama's Race to the Top initiative. The union feared that Emmanuel's ultimate objective was to weaken the union's strength and security to ease a transition toward privatized charter schools, a notion that was reinforced when he circumvented the union by making a compromise offer directly to teachers on a school-by-school vote. After the teachers' union voted to continue striking for a second week, Mayor Emmanuel filed for a preliminary injunction to end the strike, citing Illinois state law that expressly prohibits strikes concerning noneconomic issues. The mayor withdrew his request for an injunction when the unions called off the strike when a contract settlement was reached.

Both sides claimed victory in the settlement. Mayor Emmanuel succeeded in gaining a longer school day, one of his major campaign promises. At the same time, the union slowed the implementation of the new teacher evaluation system and bargained for the addition of an appeals process to the evaluation system. The union also obtained guarantees that school boards would give greater consideration to teachers who had been laid off due to school closings when they hired to fill open positions. Given the national attention it received, the strike became an arena for debates about the role and future of public sector bargaining.

The strike and the settlement revealed that the public's attitudes continued to critically influence the course of public sector labor relations and confirmed that school bargaining remained multilateral. The strike also clearly strengthened the bargaining power of the teachers' union, defying claims that strikes and strike threats no longer matter.

Difficult relations between the union and Mayor Emanuel continued after the 2011 strike. On April 1, 2016, the Chicago Teachers Union staged a one-day walkout to bring attention to the school funding issues and the fact that contract negotiations had stalled. This walkout came after the union rejected settlement recommendations provided by a fact finder.

Sources: Julie Bosman, "Chicago Teachers Approve Call to Strike as Contract Talks Stall," *New York Times*, December 15, 2015; and Michael Pearson, "Wins, Losses, and Draws in Chicago School Strike," *CNN*, September 19, 2012, http://www.cnn.com/2012/09/19/us/illinois-chicago-teachers-strike/.

agreement. At the ratification stage, political pressures from constituent may convince officials to change the terms and conditions of the bargain.

Another example of multilateralism arises when community interest groups become involved in the negotiations process. As the scope of bargaining in teacher negotiations expands to deal with issues such as student discipline, the curriculum, or the welfare of minority interests, community groups increase their involvement in negotiations.

EFFECTS OF PUBLIC SECTOR UNIONS ON PAY

Although the magnitude of the union effects on wages vary across studies, the vast majority have found a wage differential between unionized and nonunionized public employees.[15] These studies also indicate, however, that the wage effects of collective bargaining in the public sector are not greater than the effects of collective bargaining in the private sector. The wage differential between unionized and non-unionized public sector workers is typically in the range of 5 to 15 percent. That is, unions do not appear to have a stronger effect on the wages of public employees than they do on the wages of private employees.

There is also evidence that collective bargaining has had a positive effect on some fringe benefits of public employees. Unionism leads to higher pension benefits, fewer hours and days worked, and increased time off with pay.[16] The large pension increases public sector unions have won suggest that calculations that look only at the wage differential underestimate the compensation effects of bargaining.

Did the increases in expenditures on employees' salaries and benefits for certain public services result in reductions in the number of people who were employed to provide other public services? Evidence that compares employment in union and nonunion cities suggests that public sector unionism raises or at least does not lower total employment in the public sector. Apparently public sector unions are able to lobby for greater government expenditures to eliminate any employment displacement caused by higher earnings.[17]

THE USE OF INTEREST ARBITRATION

Some form of **interest arbitration,** which determines contract terms, is available in twenty-two states for resolving impasses in negotiations between state or local governments and at least some of their employees. Police and firefighters are the groups most frequently covered by the procedure. There is a wide variety of forms of interest arbitration, including conventional arbitration, final-offer arbitration, and various combinations of mediation, fact finding, and interest arbitration.

Box 13.3 describes a recent interest arbitration case concerning the pay of New York City police officers. In this case, as in other public sector disputes, pattern bargaining and ability to pay were key issues.

BOX 13.3

The Use of Arbitration and Negotiations to Set Police Officers' Pay in New York City

In early 2017, the Police Benevolent Association (PBA), the union that represents the 24,000 patrol officers in New York City's 37,000-member police force, reached a negotiated settlement that provided a 12 percent pay increase over five years. This settlement was noteworthy in part because it was only the second time since 1994 that the PBA had reached a negotiated agreement with the city rather than have wages set through interest arbitration.

Mayor de Blasio was elected in 2013 with strong support from most of the unions that represented the city's 330,00 unionized employees. Yet, the mayor and the president of the PBA, Patrick Lynch, have been at odds over the city's handling of police brutality complaints and the ground rules for the wearing of body cameras by officers while on patrol, in addition to their disagreements over officer pay. In the recent contract settlement, the PBA agreed to drop its litigation that challenged the city's body camera policy.

The 2017–2022 police contract adheres to the basic terms of a pattern that had been set in a nine-year-long agreement negotiated between the City of New York and the United Federation of Teachers (UFT), which represents 110,000 teachers, in the spring of 2014. The teachers' 2010–2018 collective bargaining agreement, which came only after extensive mediation, provides a total wage increase of 18 percent, including retroactive pay spread over the term of the agreement, and is financed in part by $1.3 billion in planned health care savings. The police received an additional 2.25 percent wage increase above the pattern in exchange for agreeing to engage in more active "neighborhood policing" and for agreeing to reductions in the pay of future police hires.

The City of New York and many of the unions that represented city employees favored pattern bargaining on the grounds that it provided stability and predictability in bargaining that involved 105 bargaining units. Under pattern bargaining, the city avoided potentially volatile bargaining and union leaders were able to answer potential criticisms that they had not done well in bargaining by following the pattern.

The PBA argued that police deserved more than the pattern given that the city's police pay lagged behind police pay in surrounding jurisdictions and because police are responsible for an ever-growing array of security related duties in addition to addressing urban crime.

Sources: John Herzfeld, "NYC, Police Union Settle on Milestone Tentative Agreement," *Daily Labor Report*, February 1, 2017 A-12; "New York Officers and Mayor Reach Deal for 12% Raise Over 5 years," *New York Times*, February 1, 2017, B-1.

DOES INTEREST ARBITRATION ADVERSELY AFFECT COLLECTIVE BARGAINING?

There is much controversy among labor relations scholars about the long-term consequences of binding interest arbitration.[18] Some claim that interest arbitration violates the spirit of free collective bargaining. Interest arbitration also has been criticized on the grounds that the availability of these procedures reduces the parties' incentive to bargain, thus imposing a **chilling effect** on the negotiations process. The parties avoid making compromises they might otherwise be willing to make because they fear the fact finder or arbitrator will split the difference between their stated positions.

A management negotiator, for example, may believe that it is better to go into fact finding or interest arbitration offering only 4 percent when management would actually be willing to offer 6 percent to avoid a strike or impasse. By going in at 4 percent, the negotiator may increase the probability that the arbitrator (the fact finder) will recommend 6 percent. Put differently, if the negotiator were to enter the procedure offering 6 percent, that might increase the probability that the recommendation or award will be for something greater than this amount. The same rationale, it is argued, drives the union negotiator. Thus, the bargaining process is chilled: each party tends to hold back concessions instead of laying its best offer on the table.

Numerous analysts have studied the effects of interest arbitration on bargaining outcomes. Some researchers have found that the availability of interest arbitration has led to wage settlements that are only 5 percent higher and slightly more favorable nonwage contract terms.[19] In some states there is also evidence of less variation in collective bargaining outcomes in the municipalities that make interest arbitration available, although this leveling effect has not been found in some other states.

There is also concern that these procedures are inherently conservative and that they favor the party that seeks the fewest deviations from the status quo. Thus,

some policy analysts fear that the presence of these procedures stifles innovation in bargaining or new breakthroughs in contract terms. Since 2000, there has been concern that arbitrators are ill suited to fashion major changes in collective bargaining agreements involving changes in work rules, the restructuring of fringe benefit packages, work reorganization, and changes in the roles of labor and management.

Evidence on the Use of Interest Arbitration

Most negotiations that occur where interest arbitration is available are settled without the use of arbitration. One comprehensive study found that in states where it is available, interest arbitration is used in between 6 and 29 percent of negotiations.[20] The variance in usage across states is partially a function of the different forms of arbitration used. **Final-offer arbitration,** where the arbitrator must choose between the parties' final offers, for example, appears to be used less often than conventional arbitration.

Even though interest arbitration is not used often, it is still possible that particular bargaining units can become addicted to the procedure once they use it. However, researchers who have analyzed the experience of individual bargaining units over successive rounds of negotiations have found no evidence of widespread "addiction" to interest arbitration.[21] These procedures also may suffer from overuse even in the absence of a chilling effect if they cost less than a strike would. It is the income losses suffered during a strike that spur the parties to negotiate a settlement, and third-party procedures may lead to lower income losses.

Furthermore, use of interest arbitration may serve political objectives for a union or for management negotiators by allowing them to pass the blame on to the arbitrator. Parties faced with difficult internal conflicts may prefer to pass such issues to the fact finder or arbitrator. There is also the worry that these procedures may favor one side or the other. This would occur if the arbitrators make decisions that were different from what the parties would end up with if interest arbitration were not available as an alternative.

The evidence consistently shows that strikes occur less frequently in states where interest arbitration is available than in states where it is not available.[22] At the same time, the data show that even in states that require interest arbitration, strikes sometimes do occur.

Judgments about the appropriateness of interest arbitration should take into consideration the evidence that arbitration leads to wages and other contract terms that are very similar to what labor and management negotiate in jurisdictions where arbitration is not available and the lower incidence of strikes that results from the availability of interest arbitration. To date, the public generally appears to be satisfied with the use of interest arbitration, particularly for police and firefighters, as an alternative to the right to strike.

DEBATES ABOUT THE RIGHTS AND REGULATION OF PUBLIC SECTOR UNIONISM

How should labor relations in the public sector be legally regulated? American labor law is governed by the premises that (1) an inherent conflict of interests

exists in the private sector between employees and employers; and (2) workers should have the right to pursue their interests through a union if they so choose. Furthermore, there is a strong preference for the process of free collective bargaining in which labor and management are given the opportunity to resolve their problems without extensive third-party interference.

However, government differs from a private sector employer because although government officials have traditional managerial responsibilities, they are elected by the public. The public thereby has a dual role to play in public sector industrial relations: as citizens who regulate the provision of public services and as consumers of public services (who pay for public services as taxpayers). The problem for public policy makers is how to maintain the right of public sector employees to influence their employment conditions, through collective bargaining if they so desire, while at the same time maintaining the right of citizens to influence government action.

Recently, critics of public sector labor relations have claimed that the current system has led to excessive pay for public employees. The research evidence, however, does not support that claim. Extensive research by Jeff Keefe and others has shown that on average the pay (including fringe benefits) of public sector employees does not exceed that of their private sector counterparts.[23] This research uses statistical techniques to appropriately control for the influence of "human capital attributes" such as years of education and experience. Keefe's research does show that employees at the low end of the skill distribution in the public sector earn more than their counterparts, while the opposite is true for high-skilled (i.e., professional) public sector employees.

Harry Wellington and Ralph Winter, among others, have taken the extreme position that the primary responsibility of governments—to represent the public interest—makes collective bargaining inappropriate for the public sector.[24] Critics of public sector bargaining also claim that if labor unions are granted the right to exclusive representation and negotiations, they will acquire undue political power.

These positions, in our view, ignore employee interests and inaccurately assess the actual effects of collective bargaining in the public sector. It is our view that public sector employees, like private sector employees, have an inherent right to participate in the determination of their working conditions. Why should the mere fact that an employee works for a government strip him or her of the right to influence employment conditions through collective bargaining?

Another aspect of public sector labor relations that has become extremely controversial is the practice in many public school districts of granting teachers tenure and protection from layoff after a given number of years of service and satisfactory performance. Box 13.4 reviews several recent court decisions regarding teacher tenure rights.

There has also been much recent debate over whether public employee unions should be allowed to receive so-called agency-shop fees from individuals who are covered by the terms of a negotiated collective bargaining agreement but are not members of the respective union. This issue came to a head in a recent decision of the U.S. Supreme Court (see Box 13.5).

BOX 13.4

Court Decisions about the Tenure Rights of Public School Teachers

Many public school systems award teachers tenure, which among other things make it difficult for districts to fire teachers. Tenure is commonly awarded when a teacher completes a specified number of years of service (often three) and is deemed to be performing satisfactorily. In recent years, tenure rights have become very controversial, with critics arguing that tenure protects teachers who perform poorly and makes it difficult to assign teachers to schools with low-income (and more difficult to teach) student bodies.

In April 2016, the first court decision to take away tenure for public school teachers was overturned on appeal in a ruling that found that California's tenure system does not violate the constitutional rights of students. Specifically, the California appeals court reversed a 2014 ruling by a Los Angeles judge that the state's tenure laws left low-income and minority students disproportionately stuck with ineffective teachers and breached their fundamental right to equality in education.

California's two largest teachers' unions had joined the case to defend tenure and argued that the lawsuit was part of a broader effort to undermine organized labor. They contended that smaller classrooms and adequate resources were more relevant to improving public education than teacher tenure provisions. The state of California, which defended the constitutionality of teacher tenure separately from the teachers' unions, claimed that tenure helps attract people to low-paid jobs in often-difficult work conditions and protects teachers from pressure by school boards when they teach controversial subjects.

In a related case, the state supreme court in North Carolina ruled in April 2016 that a 2013 state law that ended teacher tenure was unconstitutional because it applied to teachers who already had earned that employment protection. Essentially, the court argued that the retroactive application of the law was unfair and violated the contracts clause of the U.S. Constitution. However, the ban on tenure did continue to apply to teachers in North Carolina hired after 2013.

Source: Edvard Petterson, "California Teacher Tenure Survives Landmark Bad Schools Suit," *Daily Labor Report*, April 15, 2016, A-3; Andrew M. Ballard, "N.C. Supreme Court Partially Reinstates Teacher Tenure," *Daily Labor Report*, April 15, 2016, A-2.

BOX 13.5

The Legal Fight over Agency-Shop Fees in Public Sector Unions

Public sector unions in the United States, like their private sector counterparts, have long relied on agency-shop fees to collect mandatory dues from all individuals covered by a collective bargaining agreement through automatic payroll deductions regardless of whether those individuals are members of the union. This sort of dues collection was deemed a violation of the First Amendment protections of free speech by some and the issue came to a head in a case that arose in California. In a 2016 Supreme Court decision, *Friedrichs v. California Teachers Association*, public sector unions narrowly avoided a curtailment of the right to collect agency fees when the court deadlocked 4–4 over the challenge.

The logic behind the mandatory collection of fees is that it is a guard against a potential "free rider" problem whereby nonunion employees covered by a collective bargaining agreement would benefit from the bargaining power of the union made possible by dues-paying members without contributing their fair share to cover the cost of union operations. An unfavorable ruling would have severely affected union funds.

During the oral arguments for *Friedrichs*, Justice Antonin Scalia appeared to be among a five-justice majority leaning toward reversing the Court's support for agency fees. Public sector unions and their allies were in a state of near-panic, wondering what was to come if the case was decided against them.

Then, on February 13, Justice Scalia died unexpectedly before a ruling had been made. On March 29, the Court issued a 4–4 decision in the case. Tied decisions from the Supreme Court result in the affirmation of the lower court ruling on the matter in dispute. The lower court had ruled to allow agency fees, so mandatory dues remain allowable.

For public sector unions, the "decision" was less a victory than it was avoidance of a crushing defeat and an assurance of future battles over this critical issue.

Sources: "Unions Win, but the Court Is Still Hobbled," *New York Times*, March 29 2016; "*Friedrichs v. California Teachers Association*," *Forbes*, January 12, 2016.

Public Attitudes toward Public Sector Unions and Collective Bargaining

Although some politicians have called in recent years for major limitations on public sector unionism and collective bargaining, evidence that public attitudes toward collective bargaining rights for public sector employees and public sector unions have fundamentally changed is very limited. For example, a February 2011 New York Times/CBS News poll asked a sample of citizens the following

question: "As you may know, collective bargaining refers to negotiations between an employer and a labor unions' members to determine the conditions of employment. Some states are trying to take away some of the collective bargaining rights of public employee unions. Do you favor or oppose taking away some of the collective bargaining rights of these unions? If Favor or Oppose; Do you favor or oppose that strongly or somewhat." Only 18 percent of those polled strongly favored and 15 percent favored somewhat curtailing the collective bargaining rights of public sector employees, while 38 percent strongly opposed and 22 percent opposed somewhat that proposition.[25] Another question in the same poll asked "In order to reduce state budget deficits, do you favor cutting the pay or benefits of public employees?" Seventeen percent of those polled strongly favored cutting the pay or benefits of public employees to reduce state budget deficits, 20 percent favored it somewhat, 29 percent were strongly opposed, and 27 percent were somewhat opposed.

When voters have been given the opportunity to repeal laws that curtailed collective bargaining rights, they have voted in favor of repeal on several occasions in the last six years. For example, in November 2011, Ohio voters (by a margin of 61.3 percent to 38.7 percent) voted to repeal legislation that would have limited the collective bargaining rights of public sector employees in the state.[26]

Debates about Privatization

Another key challenge in the realm of public sector labor relations is calls for increased privatization of public services. While such have intensified, there is increasing evidence that privatization does not improve efficiency. In addition, there is growing empirical evidence that when privatization has occurred has had significant, often hidden, costs and limited effectiveness.[27] This evidence shows that there has been no dramatic increase in the scale or success of privatization since 2000.

Summary

Recent attacks on public sector bargaining have led some states, such as Wisconsin, to place new limits on public sector unions and to declines in public sector union membership. If the pace of this decline were to continue in Wisconsin and spread to other states, the likelihood of significant transformation in public sector labor relations would increase because large declines in union membership would inevitably lead to a decrease in the power of public sector unions.

Union membership losses could decrease the direct power of public employee unions by reducing the number of unionized employee who could influence public budget measures or the electoral fortunes of candidates through their voting behavior. Less directly, reductions in union membership would reduce union dues and thereby decrease the financial resources public employee unions could use to support political lobbying. Given the limited right to strike and the limited access to binding arbitration that exists in the public sector, it is less likely that

future ballot measures will decrease the power of public employee unions much through placing further limits on strike or interest arbitration rights.

The likelihood that economic pressures will bring about fundamental change in the public sector is, however, limited by the fact that the various economic changes that propelled the transformation in private sector labor relations—international competition and a growing and more sophisticated non-union sector—have not yet occurred and may never occur in the public sector, given the inherent local and service nature of public service provision.

At the same time, four factors have the potential to lead to future transformation:

1. Given the importance of public attitudes for both total and relative power in the public sector and the potential volatility of those attitudes, major shifts in the public's views about the legitimacy of and appropriate role for unions and collective bargaining in the public sector could produce measures to limit the union power of public employees. While current evidence suggests that public attitudes have not turned against public employee unions or collective bargaining, if those attitudes do sour, then a substantial deterioration in support for public sector labor relations would likely ensue.
2. The amount of revenue that is available to governments critically influences the total power available to labor and management in the public sector. Hence, if such revenue were to decrease significantly, whether due to reactions of voters against public employee unions or for other reasons, then public sector labor relations could face severe challenges.
3. Recent press coverage of the large pension liabilities and potential underfunding in public employee pension funds has been substantial. Public concern over pension liabilities seems to be influenced by more general worries about the size of the national debt and the "bankruptcies" occurring in several countries (e.g., Greece) and local governments (e.g., Stockton and San Diego in California). As a result, the condition of public pensions could well be a key factor that influences public attitudes toward public employee unions and public sector collective bargaining, regardless of whether there is evidence linking pension liabilities to public sector collective bargaining.
4. Elementary and secondary education employment and expenditures are a significant portion of government activity, and local schools receive substantial attention in the press, given the concerns parents have about the quality of the education their children receive. This shows up in the significant focus on the role of teachers and the unions that often represent them in debates about the U.S. education system. Correspondingly, the capability of unionized school districts and other unionized public sector jurisdictions to introduce cost savings and improvements in the quality of service through negotiated changes is likely to lead to reduced voter interest in reducing the influence of teacher unions.

Furthermore, the charge that collective bargaining leads to a perverse distortion of how governments allocate budgets is not supported by the facts. The evidence

discussed in this chapter shows that public sector unions have had a modest impact on employee pay and other working conditions and that public sector employees do not on average earn more than their private sector counterparts. In fact, where they exist, public sector unions influence government decision making as one among the many interest groups that participate in this process. Public employee representation seems to enhance rather than detract from representative democracy. Our argument does not necessarily imply that public sector collective bargaining rights should be identical to those in the private sector. Because a variety of interest groups are affected by the decisions governments make, their diverse interests must be taken into account in the collective bargaining process. Public policy must balance these objectives.

Discussion Questions

1. What factors contributed to the growth of public sector unions and public sector collective bargaining in the 1960s?
2. Evaluate the power of public employee unions in terms of Marshall's conditions.
3. Describe the structure of most public sector collective bargaining.
4. What do you think are the appropriate public policies regarding the right of public employees to form unions, engage in collective bargaining, and go on strike?

Related Web Sites

American Federation of Teachers (AFT):
http://www.aft.org/about

Federal Labor Relations Authority:
https://www.flra.gov

Patrolmen's Benevolent Association of NYC
https://www.nycpba.org

Suggested Supplemental Readings

Katz, Harry C. "Is U.S. Public Sector Labor Relations in the Midst of a Transformation?" *Industrial and Labor Relations Review* 66, no. 5 (2013): 1031–1046.

Keefe, Jeffrey H. "Debunking the Myth of the Overcompensated Public Employee." Briefing Paper 276. Economic Policy Institute, Washington, D.C., 2010.

Kochan, Thomas A., David Lipsky, Mary Newhart, and Alan Benson. "The Long-Haul Effects of Interest Arbitration: The Case of New York State's Taylor Law." *Industrial and Labor Relations Review* 63, no. 4 (2010): 565–583.

Lewin, David, Jeffrey H. Keefe, and Thomas A. Kochan. "The New Great Debate about Unionism and Collective Bargaining in U.S. State and Local Governments," *Industrial and Labor Relations Review* 65 (2012): 747–775.

Notes

1. The percent of local and state government employees represented by unions (i.e., covered by collective bargaining agreements) was 46.1 and 35.1 percent, respectively in 2008 and had fallen to 43.9 and 32.8 percent in 2016. "Union Members in 2008," Bureau of Labor Statistics News Release, USDL-09-0095, www.bls.gov/news.release/archives/union2_01282009.pdf. 2016 data is provided in "Union Members—2016," BLS U.S. Department of Labor News Release, USDL-17-0107, January 26, 2017, https://www.bls.gov/news.release/pdf/union2.pdf.

2. The percent of public sector workers belonging to unions in Wisconsin declined from 53.5 percent in 2009 to 26.1 percent in 2015. Marc V. Levine, *De-Unionization in Wisconsin and Metro Milwaukee: A Statistical Overview*, Data Brief, February 2016, University of Wisconsin-Milwaukee, Center for Economic Development. The number of government employees in Wisconsin belonging to a union dropped by 48,000 in 2012 alone, to 139,000 from 187,000 in 2011. Barry Hirsch and David Macpherson, "Union Membership and Coverage Database From the CPS," Unionstats.com, www.unionstats.com/.

3. See Joan P. Weitzman, "The Effect of Economic Restraints on Public Sector Collective Bargaining: The Lessons from New York City," in *Government Labor Relations: Trends and Information for the Future*, ed. Hugh D. Jascourt (Oak Park, Ill.: Moore, 1979), 334–346.

4. The events in San Francisco are analyzed in Harry C. Katz, "Municipal Pay Determination: The Case of San Francisco," *Industrial Relations* 18 (January 1979): 44–59.

5. See Carnegie Forum on Education and the Economy, *A Nation Prepared: Teachers for the Twenty-First Century* (Washington, D.C.: Carnegie Foundation, 1986).

6. U.S. Secretary of Labor's Task Force on Excellence in State and Local Government through Labor–Management Cooperation, *Working Together for Public Service: Final Report* (Washington, D.C.: U.S. Secretary of Labor's Task Force on Excellence in State and Local Government through Labor–Management Cooperation, 1996).

7. Ellen Dannin, "Cash-Strapped Governments: Privatization as a Response to the Crisis of the Great Recession" in *Public Jobs and Political Agendas*, ed. Dan J. B. Mitchell (Urbana-Champaign, Ill.: Labor and Employment Relations Association, 2012), 79–104.

8. A summary of public sector strike experience is found in Robert Hebdon, "Public Sector Dispute Resolution in Transition," in *Public Sector Employment in a Time of Transition*, ed. Dale Belman, Morley Gunderson, and Douglas Hyatt (Ithaca, N.Y.: ILR Press, 1996), 85–126.

9. See, for example, "New York City Transit Union Ends Subway, Bus Strike after Three Days," *Daily Labor Report*, December 27, 2005; and "Transit Union Approves Contract that It Rejected Before," *New York Times*, April 19, 2006.

10. Henry S. Farber and Harry C. Katz, "Interest Arbitration, Outcomes, and the Incentive to Bargain," *Industrial and Labor Relations Review* 55 (1979): 55–63.

11. One early study (and many later studies) concluded that on average, the demand for labor in the public sector was more inelastic than the demand for labor in the private sector. See Orley Ashenfelter and Ronald G. Ehrenberg, "The Demand for Labor in the Public Sector," in *Labor in the Public and Non-Profit Sectors*, ed. Daniel Hammermesh (Princeton, N.J.: Princeton University Press, 1975), 55–78.

12. Robert J. Thornton, "The Elasticity of Demand for Public School Teachers," *Industrial Relations* 18 (Winter 1979): 86–91.

13. There are some exceptions to this, such as the tolls collected on roads and fees collected at parks.

14. Thomas A. Kochan, "City Government Bargaining: A Path Analysis," *Industrial Relations* 14 (February 1975): 90–101.

15. For a review of these studies, see Richard Freeman, "Unionism Comes to the Public Sector," *Journal of Economic Literature* 24 (March 1986): 41–86.

16. Ibid.

17. See ibid. The researchers who conducted the studies of union effects on expenditures that Richard Freeman summarized had difficulty detecting whether higher government expenditures are caused by the same factors that cause public sector unions to grow or by the unions themselves.

18. Carl M. Stevens, "Is Compulsory Arbitration Compatible with Collective Bargaining?" *Industrial Relations* 5 (February 1966): 38–52.

19. See, for example, Thomas A Kochan, David Lipsky, Mary Newhart, and Alan Benson, "The Long-Haul Effects of Interest Arbitration: The Case of New York State's Taylor Law," *Industrial and Labor Relations Review* 63 (2010): 565–583; and David E. Bloom, "Collective Bargaining, Compulsory Arbitration, and Salary Settlements in the Public Sector: The Case of Police Officers in New Jersey, *Journal of Labor Research* 2 (Fall 1981): 369–384.

20. Ibid.

21. Ibid.

22. Ibid.

23. Jeffrey H. Keefe, *Debunking the Myth of the Over-Compensated Public Employee*, Briefing Paper 276, Washington, D.C., Economic Policy Institute, 2010; and Keith Bender and John Heywood, "Trends in the Relative Compensation of State and Local Government Employees," in *Public Jobs and Political Agendas*, ed. Daniel J. B. Mitchell (Ithaca, N.Y.: ILR Press, 2012).

24. This argument can be found in Harry H. Wellington and Ralph K. Winter Jr., *The Unions and the Cities* (Washington, D.C.: Brookings Institution, 1971).

25. "New York Times and CBS News Poll: Collective Bargaining," February 24–27, 2011, http://www.nytimes.com/interactive/2011/02/28/us/28union-poll-results.html.

26. "Ohio Senate Bill 5 Veto Referendum, Issue 2 (2011)," http://ballotpedia.org/wiki/index.php/Ohio_Senate_Bill_5_Veto_Referendum,_Issue_2_%282011%29.

27. Elliot Sclar, *You Don't Always Get What You Pay For: The Economics of Privatization* (Ithaca, N.Y.: Cornell University Press, 2000).

14 Global Pressures: Multinational Employers, International Unionism, and NGOs

THE CHALLENGE OF GLOBALIZATION

The globalization of markets for products, financing, and labor has made it easier for companies to produce many of the goods and services they sell wherever in the world the right skills can be found at the lowest cost. The desire to sell products worldwide has also created incentives for firms to have a presence in multiple countries. These developments have made labor relations in many industries global in scope. Globalization is of particular importance in the United States and in other high-wage advanced industrial economies.

Globalization poses significant challenges to labor relations practices. Until fairly recently, the laws, markets, institutions, norms, and practices of labor relations developed on a national basis. Globalization has weakened (though not eliminated) the role of national systems of labor relations and has given rise to new institutions, structures, and processes for dealing with all of the labor relations functions we discussed in prior chapters.

In this chapter, we will discuss these new arrangements and the challenges globalization poses to labor relations. We will use the framework we laid out in chapter 1 for analyzing labor relations around the world.

THE EFFECTS OF EXPANDING MARKETS

A key argument John R. Commons, one of the early theorists in labor relations, put forward was that as the markets for product and labor expanded in scope, unions and other institutions also needed to expand if they were to "take wages out of competition" by organizing workers to fit the scope of the product and labor markets in which they worked.[1] Failure to match the institutions and policies to the scope of the market, Commons argued, would reduce the bargaining power of workers and put downward pressures on wages, what some now call a "race to the bottom." Firms would move work to lower-wage regions and workers willing to work for lower-than-normal wages would migrate to take

those jobs. As discussed in this chapter, Commons's predictions have proven accurate.

Another change in the external environment—advances in communications technologies—promoted the globalization of employment, especially in sectors where services are provided. Answering phones in call centers, editing, accounting, tax preparation, radiology (X-ray reading), legal research, and document management, are among the many services that are now provided to U.S. consumers by workers around the world.

Demographic trends also support the globalization of work. **Transitioning economies** have added a significant number of workers to the global labor force in recent years, adding further competition for available work and putting greater pressure on higher-wage economies.

The Globalization of Business Strategies

Business competition is now playing out on a global basis as firms have become multinational. A **multinational corporation** (MNC) engages in economic activity in more than one country. Over the last sixty years, U.S.-based multinational firms have expanded greatly, to the point that they now have a major influence on world commerce and the conduct of labor relations in many countries.

Every MNC must make strategic choices about where to locate different parts of their production chain. This brings into play the role of business strategies as a key factor that shapes labor relations in developing countries. One key variable that influences the business strategy of an MNC is the wage levels at various potential production sites and in various countries. Although access to resources and markets also influence business strategies, the expansion of trade has led to a steady movement of manufacturing and service work from higher-wage countries to lower-wage countries and regions. Box 14.1 illustrates the evolving business strategy of Nike, a U.S.–based firm and one of the early firms to globalize its production of apparel and athletic equipment.[2]

The Nike story told in Box 14.1 is similar to that of many other MNCs that are household names, such as Apple, General Electric, and General Motors. These firms sell products that can be easily transported globally and/or that sell to global markets have **global supply chains**. The development of global supply chains offers economic development and business opportunities to developing countries and to other companies that supply parts or carry out manufacturing on a contract basis for the household-name firms. Countries around the globe (and individual firms) compete for contracts from MNCs and the jobs that go with them by offering the lowest cost consistent with quality and delivery requirements. The effect of this is that competition in labor relations has become globalized.

The Pressure of Diversity on MNCs

Workers in various countries often view work differently, attach different meanings to work, and place different demands on their unions than is the case in the United States.[3] The management of an MNC thus must develop new skills to operate effectively in different cultural, legal, and institutional environments.

BOX 14.1
Nike's Global Business Model

Nike started operating as a company in 1964. In the early years, its business model called for the design and marketing of its products to take place in the United States and manufacturing to take place abroad. First it located manufacturing in Japan. As Japan's labor costs rose and Nike's business expanded, the company moved production to Korea and later to lower-cost countries such as Indonesia, Vietnam, China, and parts of Latin America.

Nike did not own or manage the factories that produced its products. Instead, it contracted with supplier companies located in these various countries. In doing so, Nike developed global supply chains. In 2016, Nike supplied products from 600 contractors in 46 different countries around the world.

Source: http://about.nike.com/.

Of course, management in any firm faces some diversity in the demographic and racial composition of their work force and in their workers' cultures and attitudes toward work. Some workers are concerned most about their pensions, while others may be most concerned about their current income and pay little attention to deferred compensation. Some workers have strong work ethics and would like to work on their own, while others may need constant supervision. The extent of cultural diversity increases, however, as a company crosses national boundaries. For example, compensation policies that work in one country may be inappropriate in another. Or communication and motivation techniques that succeed in one culture will fail in another.

There is also wide diversity among countries in the legal regulation of labor relations and employment conditions and the institutions that shape labor relations (see Chapter 15). In some countries, for example, national laws recognize the right of workers to form unions and to strike; in other countries unions are outlawed or are dominated by the government. In some countries, the national government extensively regulates employment conditions. The ideology and form of labor movements also differs markedly across countries, as does the structure of unions.

Multinational Firms and the Centralization of Labor Relations

MNCs face control and coordination problems because of the wide diversity in the culture, law, and institutions of countries. The key decision they face in different countries is how much to centralize the management of labor relations. At one extreme, labor relations management can be centralized in the corporate offices of the MNC. Alternatively, a company can use local management in each

country in which it operates to independently direct labor relations. Management's problem is how to pursue companywide objectives through labor relations policies in the face of all the diversity that arises across the MNC.

From the 1950s to 2000, MNCs responded to this problem by allowing a high degree of local control (decentralization) in labor relations. Analysts of MNCs, in fact, generally conclude that their administration of labor relations is more decentralized than other management functions such as finance or marketing.[4] Managers of MNCs found that there were substantial benefits to be gained from decentralizing labor relations. These benefits include the ability to respond flexibly to diversity. Local managers in each country could fashion labor relations policies that fit with local conditions and events.

Since 2000, however, MNCs have begun to centralize their control and administration of labor relations. Although centralization of a corporate function has the advantage of providing consistency and economies of scale, diversity in local laws, culture, and union politics made centralization ineffective in the past.

Why have MNCs switched to more centralized control? The explanation appears to lie in the fact that the expansion of trade and the reduced influence and greater standardization of local conditions have led MNCs to prefer more centralization in their production strategies. The emergence of ever more global firms leads management to strive to integrate their internal operations and policies more fully. If production across national boundaries is integrated, for example, it makes less sense for the MNC to maintain wide variation in labor relations policies. The opening of trade through mechanisms such as the **European Union**, the North American Free Trade Agreement, and other regional trading blocs provides additional reasons for MNCs to globalize their labor relations policies.

This trend illustrates an important theme in the recent development of corporate culture, namely, that managements are increasingly striving to link labor relations more closely to business strategy. Increased globalization induces MNCs to develop particular business strategies and then align their production and labor relations systems with those strategies. While this is not very different from the dynamics at work in domestic firms, labor relations managers in MNCs face a particularly complex dilemma: globalization has increased the premium on coordination and centralization, but the cultures, laws, and institutions in the countries they operate in are very diverse.

The literature on human resources for MNCs provides theories about what happens when MNCs confront national institutions (i.e., laws and public policies). Some of the literature suggests that multinational corporations must bend to accommodate national (and in some cases local) institutional constraints and/or pressures. Instead of MNCs bringing standardization in workplace practices across countries, it is the MNCs that must bend and modify their practices to fit institutional constraints and pressures. There is evidence that the intersection of MNCs and country-specific institutions leads to **hybridization**—organizational forms and practices that are blends between the home-country practices of the MNC and the practices that are common in the country where the MNC is operating. At the same time, however, studies of the labor relations practices of MNCs consistently

reveal a tendency for MNCs to preserve a strong role for home country practices regarding matters such as pay, career development, and communications with employees.[5]

The Globalization of Labor Relations and Human Resource Management: The Case of Colgate-Palmolive

Colgate-Palmolive (C-P) is a U.S.-based multinational consumer products firm that has over 100 manufacturing facilities in thirty countries. It serves as a good case study of how a large MNC has restructured its global labor relations activities in recent years.

The sales and financial performance of C-P has been quite strong since 1990. A key to the company's success is that it has intensified its globalization. International sales now contribute most of the company's profits. C-P has also focused its manufacturing and marketing operations in particular regions in response to the regional trade pacts that have been made in recent years and to other pacts that are expected in the near future in regions such as Latin America and Asia.

Regional trade pacts have helped spur a movement in C-P toward regional "centers of excellence" through the consolidation of manufacturing. The company has moved away from its past practice of having multiple plants in a region (and, in some cases, in a country) that produce the same product. Technological improvements have made it possible to for C-P produce greater volumes in a single plant, and labor relations policies in the countries where C-P operates make three-shift-a-day, seven day-a-week production possible.

C-P also moved toward a simplified global supply chain (i.e., more global sourcing and fewer preferred suppliers) and less product variety across countries. The latter move has been associated with moves toward making C-P products more similar around the globe to take advantage of scales of economy in production and standardization of its marketing. In addition, the ease with which consumer information now moves across countries is leading C-P to seek greater central control of how its products are marketed. These factors are all leading to greater regional and global coordination of production control, marketing, and other business operations of C-P.

Human resource and labor relations decision making was traditionally decentralized at C-P; most decisions were made by facility managers or factory managers in facilities. In this traditional way of operating, country-level presidents and directors of manufacturing at C-P got involved in facility issues only when there was a crisis. A small corporate staff (a vice-president of human resources and a vice-president of labor relations) at the company's corporate headquarters in New York City provided strategic guidance to country- and facility-level managers on labor relations and human resource matters, but often they became involved in plant-level labor relations matters only when a new labor agreement was being negotiated or when a strike or some other emergency was occurring. Even then, their input was only advisory. On an everyday basis, local managers controlled the labor relations function.

In the mid-1990s, corporate managers decided in the mid-1990s that the company needed to move away from this extreme form of decentralization in its labor relations function because of the increased need for coordination across C-P given the increasing role of its global supply chain. In addition, the integration of trade and the creation of centers of manufacturing excellence led the company to consolidate is production system. It accomplished this by closing a number of facilities and expanding output flows through increased mechanization and full-day and full-week operations in the plants that remained. One consequence of this production consolidation and increased trade flows was that a labor disruption at a center of excellence would now cause greater harm to the company's sales and profits. Corporate managers wanted to have more control during labor disruptions and to engage regional human resource and labor relations managers in efforts to minimize their occurrence and effects when disruptions did occur.

A mixture of union and non-union plants evolved at C-P, with much of the growth occurring in non-union plants. However, since 2000, a disproportionate amount of consolidation has been occurring in unionized facilities, in part because the unionized plants tend to be older plants.

Since 2000, in an effort to gain more coordination and more consistency across the company and greater interaction between human resource and labor relations managers and those involved in operations, C-P has created (or expanded) regional human resource offices and gave these offices more direct involvement in plant-level labor relations activities. To improve the quality of human resource and labor relations, C-P launched a series of regional workshops that involved the company's top manufacturing and human resource and labor relations staffs. The goals of these workshops were 1) to increase the regional focus across the company's operations; 2) to increase coordination between manufacturing and human resource (and industrial relations) staff across the company (these various groups had rarely met together in focused meetings in the past); and 3) to teach a standard and strategic approach to the annual setting of key work-rule and operations objectives in all (unionized and non-union) facilities.

Middle and shop-floor managers at C-P are now expected to convey the company's labor relations goals and methods to employees and to implement C-P's global human resource and labor relations policies. This is accompanied by training for workers that focuses on instilling an appreciation for the increased need for adaptive change in the workplace.

C-P business units are now required to use a standardized "strategic labor relations process" to guide the preparation for, process of, and evaluation of collective negotiations (in unionized settings) and employee relations objectives (in non-union settings). The process includes a country-level planning meeting to set labor objectives, submission of those objectives for division approval, a strategically oriented negotiations process accompanied by an appropriate communications strategy, and subsequent evaluation of the overall process. Bargaining objectives, which typically involve work rules and work processes, and compensation objectives are identified and then the parties are expected to consider how these objectives support each another. This process takes place under the guidance of

a corporate global labor relations strategy that top manufacturing and human resource managers develop. A key outcome of this process is that various human resource performance metrics are now collected and compared across plants. The hope is that this data and comparisons of plant performance will influence the objectives that are set in the strategic labor relations process that guides labor negotiations and the formation of employee relations objectives.

Additional steps have been taken in other parts of C-P's human resource and labor relations division to stimulate more regional and global coordination of its operations. For example, the company introduced software for handling employee personnel records that gives employees an easy way to monitor and make changes in their personnel profile (e.g., when their family status changes because of events such as marriage or the birth of a child). It also created centralized call centers to handle employee requests. The move to shared information services was facilitated by the growing similarity in the nature of the business and technologies in the company's various business units, spurred in large part by the increased role of the company's global supply chain.

At the central corporate, country, and plant levels of C-P, there is now increased attention to work conditions throughout the company's global supply chain. The company makes a regular corporate audit of labor practices, including the monitoring of pay levels and work time and efforts to eliminate child labor. This audit is held at all of C-P's supplier plants and the plants the company directly operates.

The Impact of Globalization on the Management of Labor Relations Processes

For all organizations, globalization is raising a series of questions and challenges related to how labor relations are managed across global suppliers and those who contract with multinational firms:

- Which employer is responsible for labor practices in global supply operations, the MNC or the local supplier?
- Should an MNC have an explicit global labor strategy? If yes, what should it be and how should it be monitored and enforced?
- What standards should govern labor practices in an MNC's global supply chain, given the great variation in content and the level at which standards are set for issues such as minimum wages, overtime, and child labor regulations? How should MNCs deal with the great variation in the quality of enforcement of labor and employment laws across transitioning economies?
- Who, if anyone, represents workers in global supply chains? Unions are largely organized at the national level and have not expanded to serve workers across national boundaries and the level of unionization is very low in many transitioning economies (see Chapter 15).
- What are the consequences of globalization for labor relations? Is the "race to the bottom" that lowers the standards of living in higher wage countries and holds down wages and working conditions in low-wage countries inevitable

or does globalization support economic development, employment growth, and improved pay and other employment terms in transitioning nations?

MANAGING THE POLICIES AND LABOR PRACTICES OF GLOBAL SUPPLY CHAINS

The Nike company offers one example of how an MNC has dealt with these key issues. Initially, Nike, like many other MNCs, argued that labor practices among its global suppliers were not its responsibility. As worker activists brought media attention the presence of child labor and unsafe working conditions in companies in Nike's supply chain, the company experience increasing pressure to question and ultimately to revise its view. By the mid-1990s, Nike leaders observed that there was a direct correlation between the growing number of media accounts of poor labor practices and conditions in its supply chain and the company's falling stock price. In 1998, Nike's CEO Phil Knight famously said he was tired of the fact that "Nike's products have become synonymous with slave wages, forced overtime, and arbitrary abuse."[6]

Nike changed its policies and practices and became an early leader by establishing an internal Corporate Social Responsibility Unit. It charged this new unit to create a code of conduct that the company would use to monitor and evaluate labor practices in its supply chain and eventually to make public where its products are made and the extent to which its suppliers are meeting the standards in its code of conduct. Box 14.2 lists the practices covered in Nike's code of conduct. While other large MNCs have followed a similar path, unfortunately, all too often it has taken a tragic accident to motivate companies to do so. Apple's largest manufacturer in China, Foxconn, experienced suicides and considerable unrest in its factories before Apple began to actively monitor and seek to improve operations in its supply chain. The most visible and largest tragedy to date was the collapse of an apparel factory in Bangladesh in 2013, which led to the death of more than 1,100 workers, most of whom were female.

Monitoring Codes of Conduct

Once a company creates a code of conduct, it must decide how to monitor and enforce it. Should the company do it itself, using audit teams staffed by members of their social responsibility units? Should it hire and pay directly an accounting firm to audit labor practices? Should it work with and allow NGOs to do the auditing? Should it audit operations on an unannounced basis or tell suppliers in advance when audits will be done? Should it coordinate its audits with other MNCs that purchase goods from a given supplier to avoid having multiple firms using different standards and auditing operations multiple times? What standards should apply—ones that are consistent with the host country's laws, norms, and competitive wage rates or company-wide standards?

Some MNCs, such as Walmart, have sought to avoid working with nongovernmental organizations (NGOs) and instead hire consultants and professional engineering firms to monitor suppliers. Others use a mix of internal auditors,

BOX 14.2
Nike's Code of Conduct

Employment is voluntary

- The contractor does not use forced labor, including prison labor, indentured labor, bonded labor or other forms of forced labor. The contractor is responsible for employment eligibility fees of foreign workers, including recruitment fees.

Employees are age 16 or older

- Contractor's employees are at least age 16 or over the age for completion of compulsory education or country legal working age, whichever is higher. Employees under 18 are not employed in hazardous conditions.

Contractor does not discriminate

- Contractor's employees are not subject to discrimination in employment, including hiring, compensation, promotion or discipline, on the basis of gender, race, religion, age, disability, sexual orientation, pregnancy, marital status, nationality, political opinion, trade union affiliation, social or ethnic origin or any other status protected by country law.

Freedom of association and collective bargaining are respected

- To the extent permitted by the laws of the manufacturing country, the contractor respects the right of its employees to freedom of association and collective bargaining. This includes the right to form and join trade unions and other worker organizations of their own choosing without harassment, interference or retaliation.

Compensation is timely paid

- Contractor's employees are timely paid at least the minimum wage required by country law and provided legally mandated benefits, including holidays and leaves, and statutory severance when employment ends. There are no disciplinary deductions from pay.

Harassment and abuse are not tolerated

- Contractor's employees are treated with respect and dignity. Employees are not subject to physical, sexual, psychological or verbal harassment or abuse.

Working hours are not excessive

- Contractor's employees do not work in excess of 60 hours per week, or the regular and overtime hours allowed by the laws of the manufacturing country, whichever is less. Any overtime hours are consensual and compensated at a

premium rate. Employees are allowed at least 24 consecutive hours' rest in every seven-day period.

Regular employment is provided

- Work is performed on the basis of a recognized employment relationship established through country law and practice. The contractor does not use any form of home working arrangement for the production of Nike-branded or affiliate product.

The workplace is healthy and safe

- The contractor provides a safe, hygienic and healthy workplace setting and takes necessary steps to prevent accidents and injury arising out of, linked with or occurring in the course of work or as a result of the operation of contractor's facilities. The contractor has systems to detect, avoid and respond to potential risks to the safety and health of all employees.

Environmental impact is minimized

- The contractor protects human health and the environment by meeting applicable regulatory requirements including air emissions, solid/hazardous waste and water discharge. The contractor adopts reasonable measures to mitigate negative operational impacts on the environmental and strives to continuously improve environmental performance.

The code is fully implemented

- As a condition of doing business with Nike, the contractor shall implement and integrate this Code and accompanying Code Leadership Standards and applicable laws into its business and submit to verification and monitoring. The contractor shall post this Code, in the language(s) of its employees, in all major workspaces, train employees on their rights and obligations as defined by this Code and applicable country law; and ensure the compliance of any sub-contractors producing Nike branded or affiliate products.

Source: "Nike, Inc., Code of Conduct," August 2010, accessed at http://about.nike.com/pages/transform-manufacturing on January 17, 2017. See also Nike's Corporate Responsibility Report: http://about.nike.com/pages/transform-manufacturing.

consultants, and NGOs. Still others work with global labor organizations to perform auditing and training functions. We will discuss the roles NGOs play in these processes in more detail later in this chapter.

The effectiveness of corporate audits is one of the most hotly debated issues in the field of labor relations today. The results of the best research on this topic indicate that on a scale of 0 to 100, the average compliance rate tends to peak slightly above 50 percent. In addition, few plants appear to be on a path of

continuous improvement toward 100 percent compliance. Instead, over time, plants are as likely to exhibit declines in compliance scores.

Some plants do better than others on a consistent basis. Plants located in countries with strong laws governing labor and other business practices tend to have higher compliance scores. So do plants with longer-term contracts with MNCs and plants where there is more management interaction and sharing of expertise about best practices in lean manufacturing and advanced human resource management systems.[7] However, the fact that periodic audit inspections of building safety do not ensure that workplaces are truly safe is well illustrated by the examples a *New York Times* account gives of the steps managers at numerous garment factories have taken to avoid or manipulate the inspection/audit process (see Box 14.3).

BOX 14.3

Fast and Flawed Inspections of Factories Abroad

Inspectors came and went from a Walmart-certified factory in Guangdong Province in China, approving its production of more than $2 million in specialty items that would land on Walmart's shelves in time for Christmas.

But unknown to the inspectors, none of the playful items, including reindeer suits and Mrs. Claus dresses for dogs, that were supplied to Walmart had been manufactured at the factory. Instead, Chinese workers sewed the goods—which had been ordered by the Quaker Pet Group, a company based in New Jersey—at a rogue factory that had not gone through the certification process set by Walmart for labor, worker safety or quality, according to documents and interviews with officials involved.

To receive approval for shipment to Walmart, a Quaker [Pet Group] subcontractor just moved the items over to the approved factory, where they were presented to inspectors as though they had been stitched together there and never left the premises.

Soon after the merchandise reached Walmart stores, it began falling apart.

Fifteen hundred miles to the west, the Rosita Knitwear factory in northwestern Bangladesh—which made sweaters for companies across Europe—passed an inspection audit with high grades. A team of four monitors gave the factory hundreds of approving check marks. In all 12 major categories, including working hours, compensation, management practices and health and safety, the factory received the top grade of "good." "Working Conditions—No complaints from the workers," the auditors wrote.

In February 2012, 10 months after that inspection, Rosita's workers rampaged through the factory, vandalizing its machinery and accusing management of reneging on promised raises, bonuses and overtime pay.

Some claimed that they had been sexually harassed or beaten by guards. Not a hint of those grievances was reported in the audit. …

An extensive examination by The New York Times reveals how the inspection system intended to protect workers and ensure manufacturing quality is riddled with flaws. The inspections are often so superficial that they omit the most fundamental workplace safeguards like fire escapes. And even when inspectors are tough, factory managers find ways to trick them and hide serious violations, like child labor or locked exit doors. Dangerous conditions cited in the audits frequently take months to correct, often with little enforcement or follow-through to guarantee compliance.

Supply chain experts and monitors say that far too often, factory managers play cat-and-mouse games with inspectors because they are desperate to avoid a failing grade and the loss of a lucrative stream of orders.

The experts provided real-life examples. To avoid appearing illegally overcrowded, one factory moved many machines into trucks parked outside during an inspection, a monitor said. Whenever inspectors showed up at certain plants in China, the loudspeakers began playing a certain song to signal that underage workers should run out the back door, according to several monitors. During inspections in India, some factories displayed elaborate charts detailing health and safety procedures that, like stage props, were transferred from one factory to another, another monitor said. …

Mr. [Auret] van Heerden [president of the Fair Labor Association] said, "You can never visit facilities often enough to make sure they stay compliant—you'll never have enough inspectors to do that. What really keeps factories compliant is when workers have a voice and they can speak out when something isn't right."

Source: Extracted from Stephanie Clifford and Steven Greenhouse, "Fast and Flawed Inspections of Factories Abroad," *New York Times*. September 3, 2013, http://www.nytimes.com/2013/09/02/business/global/superficial-visits-and-trickery-undermine-foreign-factory-inspections.html.

Evidence shows that while codes of conduct have helped improve standards, they cannot, on their own, serve as a comprehensive strategy for achieving compliance or sustained improvements in labor standards in transitioning countries. There is evidence that countries with stronger labor laws and good enforcement practices have better rates of compliance with established labor standards. Research also suggests that combining the monitoring and auditing of labor conditions with advice and training for management on state-of-the-art lean manufacturing and human resource practices generates further improvements. The ILO's Better Factories Cambodia program suggests that a heavy infusion of incentives (lower tariffs or other trade restrictions), government and international pressures, and support for workplace-based unions can also have positive effects.

The evidence that corporate codes of conduct lead to positive (but limited) results has led to active debates over what else needs to be done to improve labor conditions in global supply chains.[8] Meetings of the multiple stakeholders involved—MNCs, NGOs, unions, government officials, representatives from the International Labour Organization (ILO), and academics—have been held at various universities to seek consensus on how to improve the monitoring of and compliance with codes of conduct, but to date no clear consensus has emerged. One big problem is that a root source of pressures to violate labor standards is the purchasing and sourcing staff of MNCs. Pressures to deliver products that have short life cycles (e.g., a popular style of shirts, shoes, etc. or the newest iPad or similar electronic device) quickly reverberate down through the supply chain to contractors, who conclude that they have no choice but to pressure their work force to meet the schedule. Not surprisingly, work hour rules—standards about overtime, maximum hours, meal and rest breaks, days off, etc.—are among the most frequently violated features of codes of conduct.

INTERNATIONAL (FREE) TRADE AGREEMENTS

International trade has been expanded in recent years through the negotiation of various trade agreements. Our review of several of those agreements focuses on the concerns about labor rights and labor conditions that surfaced during debates about these agreements and the provisions in them to address those concerns. We focus on the three trade agreements the United States has made with Canada and Mexico, Jordan, and Colombia. For a discussion of the important influence of international labor law, see Chapter 3.

NAFTA

The **North American Free Trade Agreement (NAFTA)** between Canada, the United States, and Mexico took effect in January 1994. It removed tariffs and other trade barriers among the three countries over a fifteen-year period. Both the passage and the continuing effects of NAFTA have been extremely controversial. The agreement has been widely criticized by labor unions who claim that Mexico's low wages are the reason many U.S. firms have relocated south of the border. Environmentalists worry that companies flee south so they can take advantage of weak pollution controls and lax enforcement of environmental regulations. The American business community and many economists, on the other side of this debate, support NAFTA on the grounds that it brings gains through trade to all three countries. This is the reason Presidents George W. Bush, Clinton, and Obama gave for their support for this international policy. NAFTA supporters claim that it will help integrate Mexico more fully into the world economy and thereby address Mexico's social problems and their spillover effects in the United States (such as high immigration and the drug trade). To address its critics, side agreements were added to NAFTA concerning the environment and labor rights. The labor side agreements create national administrative

offices that are authorized to investigate public charges that one of the NAFTA countries is not enforcing its own labor laws.

The U.S.-Jordan Trade Agreement

In the U.S-Jordan Free Trade Agreement (2001), both countries committed to "reducing barriers for services, providing cutting-edge protection for intellectual property, ensuring regulatory transparency, and requiring effective labor and environmental enforcement."[9] The effects of this treaty in Jordan were significant because U.S. companies such as Walmart and Target quickly established factories in Jordan and in the first year of the trade agreement Jordan increased its exports by 213 percent.

The U.S-Jordan Free Trade Agreement was the first such agreement between the United States and a foreign country that included labor provisions in the text of the agreement. Both countries agreed to comply with the ILO's Declaration on Fundamental Principles and Rights at Work and to enforce their own domestic labor laws.[10] In addition, the agreement established dispute resolution procedures and trade sanctions to be used if either country was seen as violating its domestic labor laws.

However, although the labor and environmentalist communities hailed these provisions, the U.S government's policies regarding its enforcement of labor laws became much more pro-business when George W. Bush became president. In 2001, U.S Trade Representative Robert Zoellick and the Jordanian ambassador to the United States announced that both the U.S and Jordan had agreed not to resort to trade sanctions and that neither country would use the dispute resolution enforcement procedures outlined in the free trade agreement if doing so would lead to blocking trade. Consequently, the labor provisions that had been hailed as revolutionary in this free trade agreement were not applied as had been hoped.[11] In addition, after the free trade agreement came into force in 2001, Jordan passed the Public Assemblies Law and other legislation that limited freedom of association and collective bargaining.

In 2006, a representative of the National Labor Committee (an NGO) testified to Congress that labor laws were not being enforced in Jordan and provided evidence that the Jordanian garment industry had sweatshops where workers worked twenty-hour days, were not paid consistently, and were emotionally and physically abused and that such shops hired migrant workers from China, Sri Lanka, and Bangladesh who were being forced to work as de facto involuntary servants.

The U.S.-Colombia Trade Agreement

The U.S-Colombia Trade Promotion Agreement (CTPA) was implemented in 2012.[12] The agreement states that both the U.S and Colombia will continue to maintain in domestic law the right to freedom of association (i.e., the right of workers to form and join a union) and the right of workers to engage in collective bargaining. In addition, both sides promised that they would eliminate all forms of forced labor and child labor.

Observers claim that as has been the case in Jordan and Mexico, the labor rights provisions in the Colombia trade pact have proven to be ineffective. Allegations have surfaced that since 2010, 104 labor and human rights activists have been murdered in Colombia. In addition, the Congressional Monitoring Group on Labor Rights has provided extensive documentation showing that the right to organize and engage in collective bargaining is being curtailed and undermined in Colombia.[13]

The Controversy Surrounding Trade Agreements

These three trade agreements make it clear that there is a great deal of controversy about to the real impacts of trade agreements on workers' rights and work conditions. Defenders of those agreements argue that trade does ultimately lead to higher rates of economic growth in transitioning economies and improvements, albeit gradual, in wages and work conditions. Critics, on the other hand, claim that trade pacts encourage MNCs to leave countries where wages and work conditions are better. Critics also allege that any growth in employment largely occurs in low-wage sectors, often at the expense of indigenous (and frequently more craft-oriented) production. These debates have contributed to a reluctance to approve the Trans-Pacific Partnership that has surfaced in the U.S. Congress (see Box 14.4).

BOX 14.4

The Debate Surrounding the Trans-Pacific Partnership Trade Agreement

The Trans-Pacific Partnership Agreement (TPP) is a trade agreement that was signed on February 4th, 2016, by twelve Pacific Rim countries, including the United States. The Office of the United States Trade Representative has stated that the agreement will "promote economic growth; support the creation and retention of jobs; enhance innovation, productivity and competitiveness; raise living standards; reduce poverty in our countries; and promote transparency, good governance, and enhanced labor and environmental protections." The TPP includes provisions that will eliminate or substantially reduce tariff and nontariff barriers in essentially all trade in goods and services, including barriers to investment in goods and services. It will also facilitate the development of production and supply chains, promote innovation, and ensure that economies of all levels of development can participate in trade.

Supporters of the TPP in the United States claim that it will bring about an increase in U.S.-produced exports produced and increased support for well-paying U.S. jobs that will strengthen the middle class. Although President Obama has been a firm advocate of the agreement, it has been opposed by

many Democrats. In addition to dissent from high-ranking political figures, there has been a significant amount of union opposition to the TPP. One of the main reasons for the opposition is due to fear that liberalization of trade will increase competition between U.S. labor and labor in low-wage countries that are a part of the agreement. Pacific Rim countries include Vietnam, Mexico, Chile, Peru, Brunei, and Malaysia.

Union leaders believe that the increase in competition that will result from the TPP will lead to significant losses of U.S. jobs because of outsourcing and lower wages for those who are able to keep their domestic jobs. Critics of the TPP also do not believe that the agreement has adequate protections for workers in the lower-income countries that are parties to the agreement. For example, independent labor unions are not permitted in Vietnam; only unions affiliated with the Communist Party are recognized. Brunei has outlawed strikes and refuses to recognize collective bargaining.

U.S. unions argue that the Obama administration has made concessions on labor rights issues in order to get transitioning countries to accept the agreement, despite the statement of the United States Trade Representative that the agreement promotes "enhanced labor protections." Unions believe that what little labor protection provisions the agreement does have are nullified by inadequate enforcement mechanisms. Critics of the TPP claim that worker protection effectively is left to the discretion of the individual countries, which will likely do little to change their current practices.

In order for the United States to ratify the TPP, Congress would have had to pass a bill to implement the agreement. In early 2017, newly elected President Trump signed a statement formally abandoning the TPP.

Sources: Office of the United States Trade Representative, "Summary of the Trans-Pacific Partnership Agreement," October 2015, https://ustr.gov/about-us/policy-offices/press-office/press-releases/2015/october/summary-trans-pacific-partnership; Ben Penn, Len Bracken, and Rosella Brevetti, "Some See TPP Trade Deal as Harmful to Workers," *Daily Labor Report*, October 5, 2015, C-1, Kevin Granville, "What is TPP? Behind the Trade Deal that Died," *New York Times*, January 23, 2017, https://www.nytimes.com/interactive/2016/business/tpp-explained-what-is-trans-pacific-partnership.html.

LABOR'S RESPONSES TO THE POWER ADVANTAGE OF MULTINATIONAL CORPORATIONS

The expansion of economic activity across national boundaries puts workers and unions at a disadvantage in terms of bargaining power. Multinational operation allows management to shift production and capital across national borders and raises the competitive pressures facing the work force. Imagine, for example, the pressures high-paid U.S. (and Western European) workers face when MNCs operating in their countries can shift production to countries where workers receive hourly wages that are a small fraction of those U.S. and European workers

earn and where environmental and other social regulations are weaker. Unionists refer to this as **social dumping**. When management is struck by workers in their operations in one country, it has a bargaining power advantage if it can turn to production facilities or substitute workers in other countries.

In theory, one way a union could counter the advantages management gains from a company's expansion of its production locations would be to expand its own jurisdiction to make it coextensive with the boundaries of the MNC. Unions in the United States (and in a number of other advanced industrialized countries) have expanded their jurisdiction by shifting from local or regional organizing to become national in scope as the product markets companies serve also became national. If this were to happen on a large scale, the resulting **multinational unions** would be better able to remove competition across workers in the different locations where MNCs operate. This section examines how successful unions have been at becoming multinational.

Even though there are some examples of multinational unions, or at least the coordination of policies of national unions, this has not happened very often. Let us consider why this is so and then look at some counterexamples.

Difficulties Unions Face When Operating Multinationally

Unions have found it difficult to become multinational because of the wide diversity that exists across countries in culture, law, and institutions. It is difficult enough for a union operating in one country to maintain cohesion and solidarity across its members. When the economic and cultural differences, communication difficulties, and fears that exist across workers in different countries are added on top of the normal problems unions face, maintaining solidarity becomes a nearly insurmountable problem.

Consider the problems that multinational operation in both transitioning countries and highly industrialized countries creates for union solidarity. Workers in a **transitioning economy**, who earn low wages and face few employment alternatives, are generally very reluctant to support the bargaining demands of their high-wage counterparts in advanced industrialized nations. There are strong incentives for the workers in these two countries to view each other as competitors for jobs.

Also, imagine how hard it is for a union to communicate to its members if those members speak a variety of languages. Then imagine the difficulty a multinational union would face as it tried to obtain and convey the information union members would need as they entered a bargaining process. Here is another area where management in MNCs has an advantage over unions. The managers of an MNC typically have a lot of awareness of company objectives and worldwide activities, whereas workers and unions are often hard pressed to gain information about such activities.

The merger of independent unions across national borders has not been a solution to multinational pressures. It is difficult enough to merge unions even in a single country, where there are strong advantages to be gained in bargaining power. Even greater impediments would exist if a merger were to involve two

unions based in different countries that represent workers at the same MNC. It is most unlikely that the structure of two unions that might consider merging would be similar, even if the workers were employed by the same firm. Similar problems would exist even if these unions wanted to merely coordinate their bargaining demands.

Yet even given these difficulties, examples of cross-national union solidarity and support can occur short of mergers or coordinated bargaining. We examine efforts to build cross-national union solidarity below.

Cross-border union strategies have taken many different forms. The strategies for Thai garment workers, German metalworkers, and U.S. retail workers must be different. Industry, company, union structure, political traditions, ideology, levels of bargaining power, and differing sets of goals all affect how cross-border union activities are structured.

The Role of International Trade Secretariats

Some **international trade secretariats** provide information to member unions and coordinate activities across national borders. These autonomous agencies cover particular industries or groups of industries. The International Metalworkers Federation, one of the most active of these secretariats, includes members from both newly industrializing and highly industrialized nations. Among its many activities, it issues research reports to its members.

Many of the secretariats have a close working relationship with the International Federation of Free Trade Unions (ICFTU), which includes affiliated unions that represent 48 million workers around the world. The ICFTU excludes Communist unions. The World Federation of Trade Unions (WFTU), a federation of only Communist unions, in the 1960s represented 134 million workers. After the breakup of the Soviet Union, the role of the WFTU declined precipitously. While the global expansion of trade is leading unions around the world to communicate more extensively with their counterparts in other countries, the influence of trade secretariats has been modest in part due to political differences across the unions that are members of these **union federations**.

Cross-Border Union Alliances

Some unions have attempted to overcome difficulties with communications and political differences and have extended their reach globally either on their own or by forming alliances across national unions. Airline pilots have the most fully established international body. The International Federation of Airline Pilots Associations is composed of 100 national-level pilot unions/associations with a combined membership of approximately 100,000 pilots (see Box 14.5).

Cross-National Union Strategies and Pressure Campaigns

Similar cross-border networks or formal agreements to coordinate when needed have occurred in other industries as well. One prominent example was formed in 2008 when the North American–based United Steelworkers and the United

BOX 14.5

The International Federation of Airline Pilots Associations (IFALPA)

The mission of IFALPA is to be the global voice of professional pilots by providing representation, services and support in order to promote the highest level of aviation safety worldwide.

This goal is realized through our core function which is to represent our members by:

Interacting with international organizations to achieve the highest level of aviation safety.
Developing common policies and positions and promoting the adoption of such policies by ICAO, regulatory authorities and the State of each Member Association.
Promoting and enhancing the role and status of professional pilots in ensuring the safety of the aircraft and well-being of passengers and goods entrusted to their care.
Promoting a viable and expanding air transport industry.
Providing training and education for the benefit of professional pilots.
Providing Member Associations with services as needed.
Assisting in the organizational development of Member Associations.
Supporting Member Associations by providing expertise in the areas of Technical, Safety, Regulation and Industrial issues.
Facilitating the exchange of information and the co-ordination of activities amongst Member Associations and Pilot Alliances through various forums such as Conference, Regional Meetings and Standing Committees.

Source: IFALPA, "Mission Statement," http://www.ifalpa.org/about-us/mission-statement.html.

Kingdom–based UNITE joined forces. Box 14.6 summarizes the goals of their joint effort, called Workers Uniting. To date, these unions have supported each other in strikes involving companies that have operations in Britain and North America.

Comprehensive Union Pressure Campaigns

Unions that use a mixture of research, rank-and-file activism, boycotts, and political leverage to put pressure on a company globally have developed more comprehensive campaigns since the late 1980s. These campaigns often target a single employer where workers have gone on strike, have been locked out, or are engaged in an organizing drive. Such campaigns use in-depth research to

BOX 14.6
Workers Uniting: A Global Union

Workers Unite brings together Unite, the biggest union in the UK and Ireland, with the United Steelworkers, the largest industrial union in North America. Here are four reasons why this partnership is said to be critical by Workers Uniting.

1. The economy is globalizing. From Brussels to Beijing, decisions about our economy are increasingly made far from home. A global union can provide us a voice in those decisions.
2. Politics is globalizing. Right wing politicians are using the same vicious tactics to undermine our livelihoods in the UK as they are in the U.S. and Canada. A global union can help us support progressive politics on both sides of the Atlantic.
3. Our employers are globalizing. A couple decades ago, only a few of our employers operated in more than one country. Now, nearly all of them do. A global union can help us stand up to our employers wherever they operate.
4. The movement is globalizing. Whether it's standing up for fair trade or fighting back against bank bailouts, progressive groups are mobilizing and uniting everywhere. A global union can help us join them in the fight for a better world.

Source: http://www.workersuniting.org/.

identify vulnerabilities in the company's global operations. Comprehensive union campaigns build coalitions with other unions, communities, and NGOs around the world to target the company's image, its suppliers, or its customers globally to pressure the company into improving labor conditions.

The 1986 Shell Oil boycott was one of the earliest truly global comprehensive campaigns. Using the consumer boycott as its central tactic, the Shell campaign linked anti-apartheid activists, trade unionists, civil rights activists, politicians, church activists, and consumers in a global divestment campaign. In North America, the United Steelworkers have used these types of campaigns to take on global multinational companies such as BASF, Ravenswood, Bridgestone/Firestone, and Goodyear to end strikes, lockouts, and support collective bargaining campaigns. This approach is not limited to North American unions. Central American banana workers, European dockworkers, and Taiwanese telecom workers have all used cross-border campaigns since the late 1980s.

While many campaigns have been successful, this type of global coordination and comprehensive campaigning requires large amounts of resources, funding, and long-term trust between unions. MNCs have threatened unions with lawsuits

for engaging in these types of campaigns, and weak transnational labor standards have made it difficult for unions to enforce gains that have been made.

Cross-Border Union Networks

Union networks are groups of unions at a shared multinational employer that come together to create a transnational union structure with the goals of sharing information, coordinating activity, and bargaining with an employer on a transnational level. Networks first appeared in the 1970s. Global union federations have promoted them as a way for unions to overcome the imbalance in bargaining power with multinational employers. Networks create long-term relationships between unions that have made it possible for them to share information about a common employer, to act as infrastructure during cross-border campaigns, and to act as decision-making bodies that can bargain with employers on a transnational level.

Dozens of networks have been established in the auto, chemicals, food, and service industries. Some networks such as those created by unionized workers at Carrefour and Arcelor have been able to sign agreements with employers on a transnational level. Examples include **international framework agreements** that establish basic health and safety conditions and independent monitoring. Others such as unions at Volkswagen and Mercedes have created European-style **works councils** that meet annually with company management to discuss working conditions and compliance with basic ILO conventions. Finally, others such as unions at Gerdau and Sodexo have used networks to create global comprehensive campaigns. Unions in Brazil have used networking as a strategy to coordinate bargaining nationally and to establish transnational links with unions in a company's home country.

However, challenges remain as differences in national labor laws, language and communication issues, and weak transnational legal regulations have hampered attempts to build long-term union structures such as networks.

Campaigns against Sweatshops in the Garment Industry

In the 1970s, sweatshops as a form of garment production reappeared in Latin America, the Caribbean Basin, Southeast Asia, and Southern California. Nations reeling from debt crises and **structural adjustment** programs had turned to export processing zones (EPZs) for growth strategies. EPZs are tax-free industrial havens for MNCs where they can assemble low-value products such as garments, textiles, electronics, and toys and can employ a low-wage, mainly female work force. Aided by free trade agreements and a system of subcontracting and global production, sweatshops became the symbol of high fashion apparel lines in the developed world and the face of a race to the bottom for transitioning countries.

Workers, mainly young women, organizing in places such as Guatemala, Sri Lanka, Thailand, and Haiti have used global solidarity campaigns as means of winning improvements in individual garment factories and as a way to increase pressure for industry- and retailer-wide codes of conduct. These campaigns bring

together a unique set of actors that includes garment workers and unions, transnational NGOs, labor union allies, consumer activists, and North American university students in advanced industrial economies.

Two factors are unique to organizing in the garment industry. First, many of the products produced in the apparel factories of Latin American and South Asia are sold to consumers in North America and Western Europe. This created an opportunity for garment workers to make alliances with unions and consumer groups in advanced industrial countries by bringing to light to their working conditions. Second, many of the factories in newly industrializing countries are actually subcontractors for large, well-known brand names such as Benetton, Disney, and Reebok that are headquartered in advanced industrial countries. Because of the disparity between the high cost of luxury apparel in the advanced industrial countries and the poor working conditions of workers in the transitioning countries, the campaigns of garment workers have often relied on publicity campaigns linking well-known retailers such as the Gap and Walmart to poor working conditions in transitioning countries as a way to improve working conditions in garment factories.

In addition, because athletic companies such as Adidas and Nike have large contracts with universities, U.S. college students have become key supporters of these campaigns through groups such as **United Students Against Sweatshops**.

Some unions have promoted **international framework agreements (IFAs)** as effective and participatory structures. IFAs are multilateral agreements between a corporation and a union, usually one of the **global union federations**, to ensure equal standards across a firm at a global level. IFAs establish core labor standards such as the abolition of child labor, nondiscrimination, and freedom of association. They attempt to cover all employees, including workers who are subcontracted or are employed by subsidiaries and suppliers of the firm and are designed to establish an institutionalized relationship with the firm at the headquarters level that ensures some form of monitoring and a process for improving working conditions. Unionized workers have had some success in getting MNCs to sign IFAs, but they are voluntary and are difficult to enforce due to a weak regulatory environment transnationally.

THE ROLE OF NGOS

NGOs are now playing active roles in identifying abuses, lobbying for improved standards and improved enforcement practices, and in some case actively representing workers and/or auditing labor conditions in supplier operations. Some NGOs are funded by employers and some are funded independently by private foundations, individual donations, or labor unions. Some choose to work at arm's length with MNCs and some choose to work in collaboration with them. Many NGOs use both tactics. Various meetings of multiple stakeholders have been held to bring NGOs, unions, MNCs, and international organizations such as the ILO and the World Bank together to try to learn from their experiences to date and from the research that has been done on global labor standards. However, diversity of

practices remains the norm. (See Box 14.7 for examples of different NGO activities).

The Worker Rights Consortium

The Worker Rights Consortium (WRC), one of the most active of these NGOs, has been involved in efforts to improve labor conditions at Foxconn in China, at apparel factories in Bangladesh, and at Nike plants in various countries. The history and role of the WRC is described in detail in Box 14.8.

BOX 14.7
Examples of Labor NGOs and What They Do

Name	*Activities*
Fair Labor Association www.fairlabor.org	***Monitors*** factories independently and reviews company audits Certifies compliance with codes of conduct Reports on results of audits in participating companies Governed by Board of Industry that consists of representatives from industry, NGOs, and universities
Social Accountability International www.sa8000.org	***Certifies*** that manufacturers are in compliance with Social Accountability International labor standards Trains auditors Provides self-assessment software for supply chains with recommendations for how to improve performance Lists factories that have achieved SA8000 certification Governed by mix of industry, NGO, and legal specialists
Worker Rights Consortium www.workersrights.org	***Investigates*** conditions in factories that sell licensed apparel to universities Publishes periodic reports on factory conditions in different countries Maintains public database of factories that supply goods to universities Governed by a board that consists of university, student, and other independent worker rights advocates and experts
United Students Against Sweatshops www.usas.org	***Campaigns*** against abuses of workers' rights in factories that supply apparel licensed by universities Advocates for fair working conditions for university employees Led by student representatives from participating universities
China Labor Bulletin www.clb.org.hk/en/	***Provides legal assistance*** to workers and labor organizations in China Conducts research on labor conditions in China Maintains website on strikes and collective bargaining in China Led by professional staff; founded by worker rights advocate Han Dongfang

BOX 14.8

Policing Worker's Rights in the Global Economy: The Worker Rights Consortium

The Worker Rights Consortium (WRC), a nonprofit organization started by United Students Against Sweatshops in consultation with workers and labor rights experts, has become a watchdog for international sweatshop labor. The WRC was started to help enforce the manufacturing codes of conduct adopted by colleges and universities. These codes ensure that factories that produce clothing and other goods bearing college and university names respect the rights of their workers.

The WRC has pressured universities to end contracts with companies that do not comply with labor standards. For example, in March 2000, Brown University terminated its contract with Nike Inc., because of Brown's requirement that Nike comply with the university's licensing requirements and with a monitoring system that is part of the WRC process. In its defense, Nike said it had "serious concerns about the code and monitoring system included under the WRC" and that "the only effective way to make progress in improving factory conditions around the world is to have all stakeholders at the table." Nike claimed that the WRC was excluding industries that it should be working with.

The WRC at times has clashed with the Fair Labor Association (FLA), an independent group formed by the Clinton administration in 1999 to monitor the labor standards of overseas apparel manufacturers that sell their products to the United States. The FLA grew out of the Apparel Industry Partnership, a group of apparel manufacturers, consumer groups, and labor and human rights organizations President Clinton brought to the White House in 1996. By 2000, over 100 colleges and universities had associated with the FLA so that they could be assured that clothing with their logos was not made in sweatshops. However, the WRC has criticized the FLA for being an industry-controlled monitoring system that only covers up sweatshop abuses. The WRC supported a nine-day sit-in at the University of Pennsylvania to protest the university's association with the FLA.

Since 2000, however, the WRC and FLA have begun to forge a working relationship, including working together on various monitoring projects. The WRC's membership now includes more than 100 colleges and universities.

Sources: "Nike Terminates Contract with Brown after University Seeks Compliance with Code," *Daily Labor Report*, April 4, 2000, A-2; "Temple University Reviews Membership in 'Fair Labor' Apparel Monitoring Group," *Daily Labor Report*, February 22, 2000, A-5.

THE NEGOTIATION OF GLOBAL STANDARDS

The challenge of creating negotiations structures, processes, and ongoing relationships in global operations has generated several different approaches. The most basic approach is to promote union representation on the shop floor of supplier operations by providing technical assistance to unions in transitioning countries. The ILO provides this type of technical assistance. In Cambodia, the ILO has developed a particularly extensive program called Better Factories Cambodia that provides training, dispute resolution, and monitoring of supplier operations. It also educates workers about best practices for unions and collective negotiations and labor standards. Reports on the program are quite positive, unions representing a majority of workers in some apparel plants in Cambodia. In addition, compliance with labor standards in the ILO's code of conduct range from 70 and 95 percent. However, reports continue of collusion and corruption among some employers and union leaders. This program has been sustained for over a decade in large part because of the continued support of the ILO and the Cambodian government. An independent evaluation of the ILO program has shown that the garment industry has continued to grow in Cambodia since the program was put in place and that firms that complied with the employment standards the program monitors are more likely to survive over time than those that did not initially comply.[14]

While the Cambodian example is encouraging, it has yet to be replicated in other newly industrializing countries with low rates of unionization rates remain quite low. In such countries, the challenges of maintaining stable unions in industries and in companies are quite high.

In some ways, NGOs conduct activities that are similar to what unions do. Some NGOs have led efforts to publicize abuses of labor standards. Some have negotiated with companies to upgrade health and safety and pay levels in specific countries. Others have created sophisticated software programs that help firms evaluate the state of labor practices in their supply chains and provide advice about how to improve them. Other NGOs, such as United Students Against Sweatshops, have used consumer boycotts and lawsuits against highly visible companies the produce brand-name products, such as Adidas and Nike, to pressure them to end labor abuses among their contractors.

NGOs that Do Unionlike Activities

Some NGOs include the direct negotiation of wages and improvements in other work conditions in their activities. Three prominent examples are found in India. We present them below as examples of the expanding role of NGOs are playing around the world in directly representing and bargaining for low-wage workers.

In India, as in most transitioning economies, NGOs perform some the tasks that unions in advanced industrial countries perform. One such organization is the internationally acclaimed Self-Employed Women's Association (SEWA).[15] Founded in 1972 by Nobel Peace Prize nominee Ela Bhatt, SEWA represents poor self-employed women in rural areas of India who are earn money through their own labor and small businesses. In 2008, the membership of SEWA reached

over 960,000. Dr. Bhatt's main goals for SEWA include organizing women workers for full-time employment and improving the compensation and benefits the women workers receive for that work. SEWA also lobbies state governments and the Indian national government to increase funding for health insurance and for child care centers run by the association's workers' cooperatives. SEWA also lobbies for more access to capital through credit with financial institutions, microloans, and lower interest rates for first-time borrowers.

Another highly significant NGO/union in India is the Kagad Kach Patra Kashtakari Panchayat (KKPKP). KKPKP represents waste pickers, waste collectors, and informal recyclers, all of whom are part of the informal sector of rural India.[16] A key aspect of KKPKP's role is politically lobbying. KKPKP lobbies local municipalities and state governments to increase grants to its credit cooperative, which offers loans to members and provides a social security fund so waste collectors have retirement funds. KKPKP also helps members negotiate and bargain with local municipalities and private firms that hire waste collectors. It also supports members who cannot reach an agreement with employers. For example, in April 2013, the KKPKP engaged in a sit-in strike in the city of Pune to protest the low wages waste collectors received.[17]

These are just two examples of the many NGOs in India that have taken on important union-like roles. These organizations represent workers in negotiations with government agencies as well as private sector employers. Almost 60 percent of the Indian labor market consists of rural workers, many of whom labor in the informal sector. These NGO/unions help promote the emergence of an Indian middle class through advocacy, negotiations, protests, and political lobbying.

Summary

This chapter began with the hypothesis of John R. Commons that it would be difficult to take wages out of competition by organizing the entire product and labor market in a global economy. He argued without unions as a source of power, a race to the bottom on wages and other working conditions would result, and his hypothesis turned out to be correct.

U.S.-based MNCs have benefited from much globalization, including gaining access to cheap labor and benefiting from the efficiencies global supply chains make possible. The internationalization of production has created changes that have given MNCs more bargaining power by increasing their strike leverage and their access to cheap labor and as a result of the fact that MNCs can easily shift production across national borders when facing militant labor in any one country. To date, no single institutional response or alternative source of power has been successful in counterbalancing this shift in power. Media exposure has been the most effective way of putting pressure on MNCs to upgrade standards in their supply chains. However, this method has proven to be successful only in short episodes and has not led to sustained institutional change. While media reports of tragedies or abusive work conditions create a flurry of corrective activity, they tend to lose momentum fairly quickly as media coverage fades.

Consumers in general have not responded in consistent ways or demanded data on labor standards or avoided products of companies with reported labor standards problems. However, led by students who have organized on college campuses, successful consumer campaigns have been mounted that require MNCs that sell licensed athletic and sportswear bearing university logos to comply with NGO specified labor standards.

Evidence shows that corporate codes of conduct lead to the positive (but limited) results. This has led to active debates over what else needs to be done to improve labor conditions in global supply chains.

In addition, a number of cross-national union efforts have emerged, some of which involve international networks of unions and workers. Other union campaigns have linked with NGOs to make use of consumer and political pressure. It seems to be the case that achieving and sustaining acceptable work conditions in supply chains of MNCs will require a combination of efforts from management, labor, NGOs, and governments, perhaps eventually reinforced by consumer purchasing behavior.

Discussion Questions

1. Why do international production opportunities and international trade generally advantage multinational corporations and disadvantage union in terms of bargaining power?
2. In the past, what factors led most multinational corporations to prefer to structure their internal labor relations function in a decentralized manner, leaving most control over labor relations issues to local plant managers?
3. What recent factors/trends are leading many multinational firms to move toward more central coordination of their internal labor relations function?
4. Why is it so difficult for unions to forge cross-national alliances and launch successful cross-national pressure or bargaining campaigns?
5. Describe some of the steps you would take as the head of labor relations in a large multinational firm to make sure that work conditions are fair and respectable in your firm's global supply chain.

Related Web Sites

ILO on Export Processing Zones:
http://www.ilo.org/actrav/areas/WCMS_DOC_ATR_ARE_EPZ_EN/lang–en/index.htm

Better Factories Cambodia:
http://betterfactories.org/

Nike Code of Conduct and Corporate Social Responsibility:
http://about.nike.com/pages/transform-manufacturing

Suggested Supplemental Readings

Bronfenbrenner, Kate, ed. 2007. *Global Unions: Challenging Transnational Capital Through Cross-Border Campaigns*. Ithaca, N.Y.: ILR Press.

Multinational Companies in Cross-National Perspective: Integration, Differentiation, and the Interactions between MNCs and Nation States. Special issue, *ILR Review* 66, no. 3 (2013).

Locke, Richard M. 2013. *The Promise and Limits of Private Power*. Cambridge: Cambridge University Press.

Posthuma, Anne, and Dev Nathan eds. 2010. *Labour in Global Production Networks in India*. New Delhi: Oxford University Press.

Notes

1. John R. Commons, "American Shoemakers 1648–1895: A Sketch of Industrial Relations." *Quarterly Journal of Economics*, 24 no. 1 (1909): 39–98. See also Lloyd Ulman, *The Rise of the National Trade Union* (Cambridge, Mass.: Harvard University Press, 1958).

2. For more on the history of Nike and evidence of labor conditions in global supply chains, see Richard Locke, *The Promise and Limits of Private Power* (Cambridge: Cambridge University Press, 2013). The material in this chapter draws heavily on this book and on the larger MIT-Stanford University Just Supply Chain research project.

3. See Jan Katz, "Cultural Issues in International Business," in *Handbook of International Business*, ed. Walter Ingo (New York: Wiley, 1988): 11-1–11-17.

4. For recent research on how MNCs internally structure and operate their labor relations function, see *Multinational Companies in Cross-National Perspective: Integration, Differentiation, and the Interactions between MNCs and Nation States*. Special issue, *ILR Review* 66, no. 3 (2013).

5. Ibid.

6. Quoted in Locke, *The Promise and Limits of Private Power*, 49.

7. Ibid., 47–77.

8. See, for example, the Forum on this topic in *The Boston Review* 38 (May/June 2013): 12–29.

9. Pablo L. Gradi, "Trade Agreements and Their Relation to Labour Standards," Issue Paper no. 3, November 2009, International Centre for Trade and Sustainable Development, http://ictsd.org/downloads/2011/12/trade-agreements-and-their-relation-to-labour-standards.pdf.

10. Eli Kirschner, "Fast Track Authority and Its Implications for Labor Protection in Free Trade Agreements," *Cornell International Law Journal* 44, no. 2 (2011): 386–415.

11. *Justice for All: The Struggle for Worker Rights in Jordan* (Washington, D.C.: Solidarity Center, 2005), http://www.solidaritycenter.org/wp-content/uploads/2014/12/Jordan-JFA.pdf.

12. Office of the United States Trade Representative, "U.S.-Colombia Trade Agreement," https://ustr.gov/uscolombiatpa.

13. "The U.S.-Colombia Labor Action Plan: Failing on the Ground," 2013. A Staff Report, Committee on Education and Workforce Democrats, U.S. House of Representatives, October. http://democrats.edworkforce.house.gov/sites/democrats.edworkforce.house.gov/files/documents/Colombia%20trip%20report%20-%2010.29.13%20-%20formatted%20-%20FINAL.pdf.

14. Drusilla Brown, Rajeev Dehejia, and Raymond Robertson, "Is There an Efficiency Case for International Labor Standards?" working paper, Tufts University, 2013. See also Kingdom of Cambodia, International Labour Organization, and Better Factories Cambodia, "Thirtieth Synthesis Report on Working Conditions in Cambodia's Garment Sector," July 2013, http://betterfactories.org/?p=6706.

15. "About Us," *Self-Employed Women's Association*, http://www.sewa.org/About_Us_History.asp.

16. "About Us," *Global Alliance of Waste Pickers*, http://globalrec.org/who-we-are/.

17. Leslie Vryenhoek, "KKPKP's Six-Day Protest Wins a Promise from Municipality," *WIEGO*, April 11, 2013, http://www.inclusivecities.org/blog/kkpkps-six-day-protest-wins-a-promise-from-municipality/.

15 Labor Relations in Other Countries

INSIGHTS GAINED FROM COMPARATIVE LABOR RELATIONS

One way to gain perspective on the labor relations system in your home country is to compare it with systems in other countries. The U.S. labor relations system is unique in many ways. The United States, for example, has one of the lowest rates of unionization of any advanced democratic economy, and its rate of unionization has fallen faster in the past 30 years than that of any other industrialized country in the world. Management in the United States opposes unions more strongly than managers in most other countries, and unions in the United States are less closely tied to political parties than their counterparts are in Europe, Australia, and many newly industrialized countries.

Other differences between labor relations in the United States and labor relations elsewhere are noted throughout this chapter. A comparative look at what happens in other countries makes is possible to assess whether any features of the labor relations systems in other countries should be imported to the United States. This question is now on the minds of many U.S. labor relations practitioners.

The three-tiered framework needs to be supplemented to take account of the important roles that governments, international agencies, and NGOs play in industrial relations in countries other than the United States (see Figure 15.1). A comparative assessment of labor relations also should take account of the substantial differences that exist across countries in their laws, political systems, and history. The diversity in labor relations practices around the globe is so great that it is not possible to present even a cursory examination of all of them. As a framework for an international perspective, then, this chapter examines in detail the key features of the labor relations systems in Germany and Japan as examples of advanced industrialized countries and in China, India, South Africa, and Brazil as examples of transitioning economies.[1]

AN OVERVIEW OF HOW LABOR, MANAGEMENT, AND GOVERNMENTS INTERACT

Regardless of where a country is on a spectrum of industrialization, labor, management, and government engage in complex interactions that strongly influence

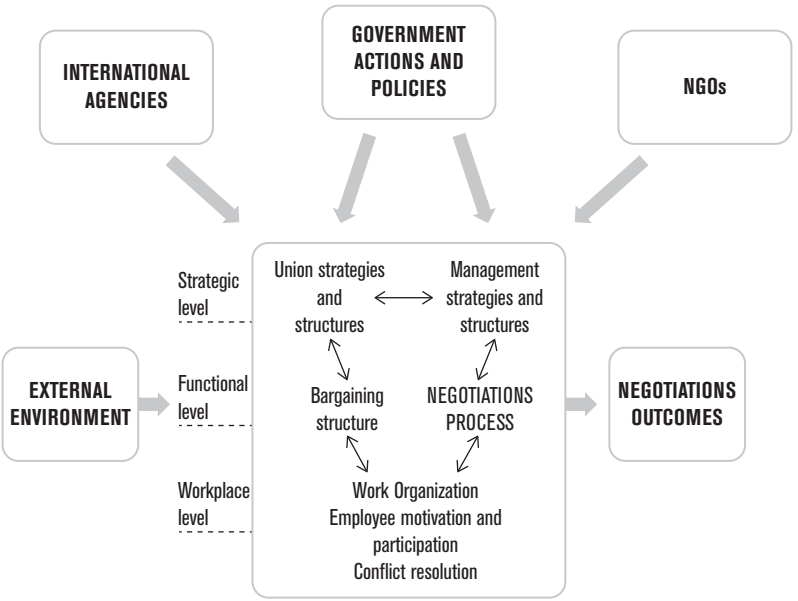

Figure 15.1. The three-tiered approach to the study of comparative labor relations

the evolution of labor relations. For example, unions and other workers' movements in some countries have aligned with a political party or are the core constituents of a labor party that is active in mainstream politics. In this chapter, we will discuss some cases where unions are aligned with the governing leaders or a governing party. Another way unions and workers have influenced governments is through their involvement in protests or other political actions that are part of **democratization** campaigns or movements. Some of these efforts to promote democracy have succeeded and have led to major political transformations.

On the other hand, governments in some countries have acted to sharply curtail trade union activities and power. Governments have done so either by outlawing union activities or by directly intervening to stop a strike or a union organizing effort. In some countries unions are allowed, but governments control them or sharply constrain what they can do. We describe some of those cases. It is important to differentiate between trade unions that are independent and those that are dominated by a government.

Governments also critically affect labor relations in companies and sectors that a government owns or runs. Historically, nationalization of telecommunications, airlines, or banking industries or resource extraction enterprises, for example, has influenced the labor relations and employment conditions in those companies and sectors. Governments also have significant influence on labor relations through regulations, in particular through laws that regulate the right to strike and other union activities.

Management and the interest groups that represent employers are also often active participants in political processes in many countries that are striving to promote their interests. For example, in some countries the business community is strongly aligned with a particular political party or is part of a governing coalition. Management can use its influence to promote the labor laws or the tax, trade, and other economic policies it favors.

An Example of How a National Government Has Shaped Labor Relations: China

The role of national governments in labor relations varies greatly. China is an example of a country where the national government and the Communist Party played a central role in the past in the functioning of the economic system and of employment relations. However, the roles of the national government and the Communist Party have evolved as a result of the introduction of economic reforms that led to a greater role for market forces, as Box 15.1 describes.

BOX 15.1

China: The Evolving Role of the Government and the Communist Party

Before market-oriented economic reforms, China had a planned economy in which the national government was the single employer. In the planned economy, the government set up detailed national and firm-level plans that included production and wage levels. Communist Party secretaries were the primary figures in enterprises; they helped maintain the influence and political power of the Communist Party and oversaw economic and social activities in enterprises. In this system, since the Communist Party (and the national government) claimed to represent the interests of the working class, there was no representative role for trade unions.

Economic reforms introduced from the 1980s on led the national government and the Communist Party to gradually withdraw from the micromanagement of workplaces. This is particularly true for the private sector, where employers were given autonomy in business operations and employment, albeit within the constraints provided by laws. In state enterprises, management no longer needs to fulfill political functions for the government. However, the government still has considerable influence in state enterprises, particularly through its appointment of top managers. These appointed managers still hold the status of Communist Party officials and can be transferred to other Communist Party or government posts at any time.

In addition, the national government in China continues to act as a regulator, arbitrator and mediator, and inspector in the employment system.

Source: MingWei Liu, "China," in *Comparative Employment Relations in the Global Economy*, ed. C. Frege and J. Kelly (New York: Routledge, 2013), 324–347.

THE ROLE THAT LABOR HAS PLAYED IN DEMOCRATIZATION

Since World War II, the labor movement has played key roles in introducing or deepening democracy in a number of transitioning countries. Events in South Africa and Korea are described in Boxes 15.2 and 15.3 below. A common theme in these and other countries is that the labor movement and unions often have aligned with student groups and other active members of civil society to increase

BOX 15.2

The Role Unions and Labor Protests Played in Bringing an End to Apartheid in South Africa

Apartheid was a racial segregation system enforced by the South African government from 1948 to 1994. Under apartheid, the rights of black and mixed-race South Africans were severely restricted. The National Party controlled the economic and social systems of South Africa during the apartheid period.

The African National Congress (ANC), founded in 1912, was a major force of opposition to the apartheid system. Throughout the first forty years of resistance, the ANC focused on using legal tactics and nonviolent direct action as its method of protest. However, the perseverance of apartheid even in the face of these tactics led the ANC to shift to advocating violent resistance activities, such as bombing government facilities, so long as the tactics avoided civilian deaths. Then labor protests emerged as a key challenge to apartheid; black trade unions and eventually trade unions that organized white workers led these protests.

During apartheid, the government sought cheap labor on mines and farms, which led to the formation of a migrant labor system among the black population and a set of laws that reserved specific, separate job sets for different racial populations. In response to such legislation, unions such as the South African Congress of Trade Unions (SACTU) emerged in the 1960s, only to be brutally oppressed by the state. However, in the late 1960s, leaders of the black consciousness movement, who realized the potential of union activity, joined with unions to take more aggressive actions to try to end apartheid.

A key turning point came in 1973 at a large industrial complex in Durban, South Africa. On January 9, all 2,000 workers at the Coronation Brick and Tile plant in the Durban complex went on strike, demanding wage increases and presenting an elected committee to negotiate with management. The resulting wage settlement spurred widespread union activity throughout the city of Durban and then in many other parts of South Africa. Transport, and then municipal, workers followed suit and within one month, 30,000

workers in Durban were on strike. The apartheid system, which depended upon black labor to keep its economy running, was facing for a serious challenge to its continuation the first time.

The Durban-inspired strike wave led to the establishment of several large trade union federations, including the Federation of South African Trade Unions (FOSATU) and the Congress of South African Trade Unions (COSATU). Subsequent strikes organized by these federations led the South African government to launch investigations of wage levels and to eventually pass amendments to the Labor Relations Act that established unfair labor practices and permitted black trade unions to form legally.

Critically, the base of worker militancy was in the manufacturing, commerce, construction, transport, and communication sectors. In contrast to the mining industry, which corralled migrant workers into residential compounds, these sectors were the most feasible to organize because the rising cost of white labor meant that mining employers were increasingly dependent upon the employment of Africans. Industries in the manufacturing and service sectors were the highest paid in the economy, reflecting the developing power and strategic location of black semi-skilled workers. Meanwhile, the newly emerging democratic trade unions premised their initial growth on the organization of African labor.

Although the new unions faced severe repression and were always challenged by the that fact that a mass of surplus labor existed because of an endemically high level of unemployment among black workers, they managed to survive, grow, formalize, make wage gains, and erode the foundations of workplace despotism.

The apartheid regime faced a severe challenge to its authority in 1973, when the United Nations General Assembly denounced apartheid, which was followed by the UN Security Council's vote to impose an embargo on the sale of arms to South Africa in 1976. Facing growing international pressure, the National Party instituted several reforms, and in 1994, a new constitution was adopted that enfranchised blacks and other nonwhite racial groups through democratic elections. A key step in the final end of apartheid was the release of Nelson Mandela, a leader of the anti-apartheid movement, from prison. Mandela became the head of the first post-apartheid democratically elected government. Although he had been imprisoned for twenty-seven years, he was able to live a long and highly influential life (he died at age 94 in 2013).

Although many factors contributed to the ending of apartheid, it is clear that unions and labor protests contributed much to this transformation.

Source: Lester Kurtz, "The Anti-Apartheid Struggle in South Africa (1912–1992)," International Center on Nonviolent Conflict, June 2010, http://www.nonviolent-conflict.org/index.php/movements-and-campaigns/movements-and-campaigns-summaries?sobi2Task=sobi2Details&sobi2Id=29.

BOX 15.3

The Role of Korean Unions in Democratization and Political Change

The post–World War II history of Korea was marked by authoritarian rule by governments in league with the military. Violent political protests erupted periodically to challenge that rule. Labor unions have played leading roles in those political protests. In 1960, trade unions played a leading part in the violent protests that culminated in the fall of the Syngman Rhee government. In 1980, violent protests again swept the country as workers demanded workers' and union rights and improved wages and working conditions. In 1987, after Roh Tae-Woo, the ruling Democratic Justice Party's presidential candidate (and eventual victor in a subsequent election), pledged his support for popular elections to determine a new president of the Republic of Korea, a democratization movement began. The subsequent democratization process unleashed popular protests and demands, particularly within the trade union movement.

A massive strike wave followed, along with a rapid rise in union membership and an explosion in wage levels. On May 2, 1990, for example, there were violent protests in the port city of Ulsan when 30,000 workers from affiliated Hyundai companies held rallies at work sites to protest a massive police raid on strikers at the Hyundai Heavy Industries Company.

Worker protests were in part directed at existing trade unions and union leaders. An array of unions was affiliated with the Korean Federation of Trade Unions, and protesting workers opposed the complicity that had existed between these unions and the government and employers. Workers not only demanded higher wages and better working conditions but also sought procedures that would allow unions that were independent from government and managerial dominance.

The protest wave cooled down in the early 1990s, but another wave of labor protest occurred in early 1997, spurred by government efforts to change Korea's labor laws to introduce more flexibility into the labor market and address problems that had begun to surface in Korea related to competitiveness in the global market.

Labor protests erupted in January 1997 after a secret session of the National Assembly proposed a harsh bill that among other things would make it easier for firms to lay off employees. A three-week wave of strikes followed that focused on the large firms, including the Hyundai Motor Car Company. The strike wave was followed by months of negotiations, often behind the scenes, that led to a new labor law bill that was adopted in March 1997 with the support of the opposition and government political parties. In recent years, changes in labor laws in Korea have included the legalization of collective negotiations for public school teachers and the creation of an

unemployment fund. The number of irregular and nonstandard workers has increased in Korea in recent years. While the labor movement has not been happy about all of these developments, unions have tried to influence events through democratic political channels.

Sources: Wonduck Lee and Joohee Lee, "Will the Model of Uncoordinated Decentralization Persist?" in *The New Structure of Labor Relations: Tripartism and Decentralization*, ed. Harry C. Katz, Wonduck Lee, and Joohee Lee (Ithaca, N.Y.: ILR Press, 2003), 43–65; Byoung-Hoon Lee, "Employment Relations in South Korea," in *International & Comparative Employment Relations: Globalization and Change*, 6th ed., ed. Greg J. Bamber, Russell D. Lansbury, Nick Wailes, and Chris F. Wright (Australia: Allen & Unwin, 2016), 266–290.

democratization. In the case of South Africa, this led to the end of apartheid. This leads many to question what will happen if union membership continues to decline, possibly to the point that the political influence of unions is greatly weakened. What forces or social groups, if any, will replace the positive contribution unions make as defenders and proponents of democracy?

BRIEF DESCRIPTIONS OF THE LABOR RELATIONS SYSTEMS AND KEY CONTEMPORARY ISSUES IN GERMANY, JAPAN, BRAZIL, CHINA, INDIA, AND SOUTH AFRICA

The sections that follow provide brief descriptions of the key features of the labor relations systems in Germany, Japan, Brazil, China, India, and South Africa and highlight the key issues that have surfaced in each of those countries. Readers can find more complete descriptions of the systems and contemporary issues in the sources provided at the end of this chapter.[2]

We first focus on Germany and Japan, as these are two highly advanced industrial economies with labor relations systems that differ greatly from each other and from the system in the United States.

LABOR RELATIONS IN GERMANY

The distinguishing feature of labor relations in Germany is the presence of **codetermination**, which enables elected employee representatives to participate in decisions of firms related to business and human resources.[3] Codetermination procedures are mandated by German federal law and apply to all companies in the country regardless of whether employees in those companies belong to unions.

Codetermination

There are two key parts to German codetermination: the presence of employee representatives on **works councils** and company boards. Codetermination gives

employees a form of representation that parallels union representation. Although codetermination and collective bargaining procedures are formally distinct forms of worker representation, there are many close connections between the operation of these two channels of representation and the individuals involved in each.

Employee Representatives on Supervisory Boards

German federal law mandates that employees elect representatives to the **supervisory boards** of all German companies. The number of representatives employees elect to a supervisory board varies by the size of the firm and by industry (special provisions cover the coal and steel industries). To understand the implications of these procedures, it is helpful to examine the structure of German company boards.

German firms have a two-tiered board structure. The supervisory board (*Aufsichtsrat*) is the higher-ranked board and is responsible for monitoring managerial promotions and performance and appointing top managers. The lower managing board (*Vorstund*) runs the firm on a day-to-day basis and implements most decisions of management.

Employee representatives to the supervisory board are elected from the ranks of blue- and white-collar employees with each category of employee guaranteed proportional representation. The law also reserves two or three of the supervisory board seats for union delegates, depending on the size of the board. In impasse situations, the chair of the supervisory board (who is nominated by shareholders) can vote to break the tie. Employee representatives on the supervisory board often run on slates associated with particular unions and are often active in unions. They are frequently union officials.

The consequences of employee representation on supervisory boards varies across companies and is sometimes hard to detect. Some analysts claim that employee board representation has provided a major contribution to the low strike frequency that has been characteristic of the German labor relations system since World War II.

Works Councils

The works councils mandated by federal law for all private enterprises with more than five employees are the second major component of the German codetermination structure. Works councils have many rights to information, consultation, and codetermination. The 1972 Works Constitution Act, for example, stated that works councils can be involved in resolving conflicts related to the following issues:

Discipline
Daily working hours and breaks
Temporary short-time or overtime work
Piece rates for jobs
Pay systems
Suggestion schemes
Holiday schedules
How employee performance is monitored

Safety regulations
Company welfare services
Administration of employee housing

Works councils also codetermine any changes in the pace of work or the work environment. The law requires that works councils and employers negotiate how change happens whenever any major changes take place in how a company operates. When management wants to lay off employees, it must negotiate with the works council and reach an agreement (specified in a "social plan") on the factors that determine who gets laid off and the compensation arrangements for those who are laid off.

Members of works councils are elected by all employees in a firm regardless of union affiliation. However, works council members usually cooperate closely with union officers or hold union office themselves. Works councils cannot call a strike, but they can sue management in a case of a breach of contractual rights.

Union Representation and Structure

Unions also play an important role in the German labor relations system. Unions represent 25 percent of the German work force, but nearly 80 percent of the German work force is covered by collective bargaining agreements due to the legal extension of major collective bargaining agreements.[4] After German reunification in 1990, unions based in the former West Germany extended their jurisdiction to the former East Germany. While economic transformations and the bankruptcy of many firms has weakened unions in the eastern parts of unified Germany, unions have played a key role in the restructuring of this region.

German unions provide representation during the negotiation of collective bargaining agreements that set pay increases and other employment terms. Unions also typically are actively involved in the codetermination processes, in some cases through the union activists or officers that serve either as employee representatives on a supervisory board or as works councilors.

German unions also are generally active in political and social issues. The largest federation of German unions, the Deutscher Gewerkschaftsbund (DGB), is closely aligned to the Social Democratic Party.[5]

Collective Bargaining in Germany

Collective bargaining in Germany is generally highly centralized. Most collective agreements are reached at the industry or regional level. The most important unions in the private sector represent workers in one or more industries. IG Metall, for example, represents workers in the metalworking industries. In 2001, a superunion, ver.di, which represents workers throughout the service sector, was formed through the amalgamation of a number of private and public sector unions (see Box 15.4).

German labor law does not give unions exclusive representation rights. More than one union can (and often does) represent employees at a work site, even among employees who perform similar jobs.

BOX 15.4

German Service Unions Merge to Create ver.di, a Union with Three Million Members

On March 17, 2001, more than 1,000 delegates from Germany's five service sector unions voted to dissolve the structures in their respective organizations and merge into one of the world's largest labor organizations. The new organization, which has a total membership of three million, is called the United Services Producers, or ver.di (short for Vereinte Dienstleistungsgewerkschaft). Ver.di consists of workers from the Public Services and Transportation Union (ÖTV), German Salaried Employees Union (DAG), German Postal Employees Union (DPG), Trade, Banking, and Insurance Union (HBV), and Media Union (IG Medien).

The founders of ver.di hoped that the merger would create a united front to combat new problems the labor movement faces in Germany. Their goal was for ver.di to create a stronger position for combating problems such as declining union membership levels and rising unemployment rates. The new superunion also sought to counteract the growing lobbying efforts of business interests that want to restructure employment markets and weaken the role of unions.

Ver.di has had limited success in achieving its ambitious goals. It has not been able to reverse the spread of privatization and concession bargaining in the public sector. Furthermore, young workers have exhibited reluctance to join ver.di (or other German unions) at the rates their parents did, and the political influence of ver.di has not increased to the degree its founders had hoped.

Sources: "Merger of German Labor Groups Would Create World's Largest Union," *Daily Labor Report*, December 29, 2000, A-3; "Merger of German Service Unions Creates 3-Million Member Union," *Daily Labor Report*, March 20, 2001, A-4.

Employers are commonly represented by employer associations organized by industry or in regional collective bargaining.[6] Once an agreement is reached between a union and an industry association over wages and other basic employment terms, these terms are extended by law to other employees and firms in that industry. Distinctions between unionized and nonunionized workers are not allowed in collective bargaining agreements.

Often collective what are called ordinary bargaining agreements last only one year and include pay in their terms. These ordinary agreements are signed under framework agreements that last for a number of years. Plant-level negotiations between a works council and management typically supplement the industry agreements.

Since 2000, there has been some movement toward more decentralized collective bargaining in Germany. This has happened, for example, when firms in the eastern region have refused to honor terms in an industry-level collective bargaining agreement. Even in the western region, there has also been a growing tendency toward firm-level deviations ("concessions") in firms that face job losses and threatened closure. However, even in the face of these pressures, the German collective bargaining system remains relatively centralized.

Vocational and Apprenticeship Training

A very strong vocational and **apprenticeship training system** supports relations between labor and management in Germany. Young people must choose among three educational tracks around age 16: a college-bound program, an apprenticeship vocational school program, or a general education program.

Two-thirds of high school graduates who do not go on to college enter the labor force as graduates of a vocational educational program. The apprenticeship programs in vocational schools are overseen by a joint business-labor group that sets the qualifications for each occupational program. This system of training and certification provides German employers with a highly skilled labor force and is often cited as one of the key sources of Germany's economic success.

In summary, the German model of labor relations stresses formal, legally mandated structures for worker representation and training. These include codetermination, employee representatives on company boards, works councils, apprenticeship training, and collective bargaining terms that apply across all the firms in an industry. Through these formal structures, German unions and employers have achieved high levels of wages and social benefits, strong productivity performance, flexibility in the use of human resources, and low rates of strike activity.

Although the modernization of eastern Germany has been very costly and led to high unemployment, it is noteworthy that this transition occurred without significant opposition from either management or labor. This too attests to the high level of acceptance of unions and the codetermination system in German society.

LABOR RELATIONS IN JAPAN

Japan has a distinctive labor relations system that has several key features. Some of these key features are also found in other Asian countries.

Enterprise Unionism

The distinguishing feature of Japanese labor relations is the central role of enterprise unions.[7] Enterprise unions in Japan represent both the white- and blue-collar employees of a firm, regardless of occupation. They also include management staff. Of the firm's full-time employees, only the higher-level managers do not belong to the enterprise unions. Thus, supervisors and line workers belong to the same enterprise union, and supervisors often play a very active role in union affairs. New hires (other than managers) automatically become union members and pay dues to the enterprise union.

Union Federations and Employer Federations

Enterprise unions commonly are associated with industry union federations, which are, in turn, affiliated with union confederations.[8] Employers commonly belong to **employer federations**. Both union and employer federations provide advice and engage in political lobbying but do not become directly involved in enterprise-level collective bargaining.

Although industrial, craft, or general unions are rare in Japan, some important exceptions do exist. In addition, while most collective bargaining occurs at the enterprise level (between an enterprise union and the management of a firm), industry-level collective bargaining does occur in private railways, bus services, textiles, and some other cases.

The Lifetime Employment Principle

Japanese firms, particularly large ones, tend to hire new employees upon their graduation from school (high school graduation for blue-collar workers and university graduation for managers), and employees stay employed with that firm until they reach retirement age. This is **lifetime employment.** To avoid laying off "permanent" employees during business downturns, Japanese firms transfer workers across work areas and sometimes into training. If a large firm faces extreme financial difficulties, it might also shift some of its work force to other firms in its **trading group.** Trading groups are firms linked together through common owners or through close business connections. These employees are in effect loaned across companies and return to their original firm if it recovers.

The internal movement of permanent employees within and across firms is facilitated by the fact that workers receive extensive training and often rotate across jobs in a work area (or across work areas) during their work careers. This, like many of the other industrial relations practices in Japan, leads employees to strongly identify their personal interests with those of the company they work for.

Japanese firms can fulfill their promise to avoid laying off permanent employees because they also employ large numbers of workers on a part-time or temporary basis. These workers are not included in the lifetime employment system.

In addition, workers retire relatively early in Japanese firms. In the past, the average retirement age was 55; today it has risen to a mean of 64 in the face of declines in the number of new workers entering the Japanese work force.

Many employees who are promoted to supervisory and/or management positions were previously union members and some were union leaders. The movement between union and management careers can go both ways. When conducting an interview with a vice-president of the Honda Motor Workers Union a few years ago, one of the authors was surprised to discover that this person had at one point been a manager at Honda. After serving in a management personnel job, he decided to run for union office. This practice is not uncommon in Japan.[9]

Lifetime employment is not guaranteed through a clause in a contract or any other binding agreement between Japanese firms and their workers or unions. Rather, firms promise to try to avoid layoffs. Firms do lay off workers when they

experience extreme financial pressures, however. This informal arrangement is typical of Japanese industrial relations. Few of the distinguishing features of the Japanese system are the products of legal requirements or of formal contracts. Instead, Japanese practices are shaped heavily by norms and customs that have built up over the years.

The enterprise union system is typical of large firms in Japan; by some estimates, it covers one-third of the Japanese work force. This system is found to a lesser extent in small and medium-sized firms that often serve as suppliers or subcontractors to large firms.[10] In these smaller firms, wages are typically 15 to 30 percent lower and there is less employment security. There is also evidence that although the lifetime employment system has been declining in importance as workers have begun to move to other firms more frequently, Japan continues to exhibit distinctive employment security practices.[11]

Pay Determination in Japan

Most pay agreements are set in annual negotiations that occur between a firm and an enterprise union. Many pay negotiations occur in the spring as part of the annual national **spring wage offensive** (*Shuntō*). In this offensive, enterprise unions and managements consider the guidelines their respective union and employer associations have issued and give special attention to wage settlements reached in negotiations at a handful of key firms.

Workers typically are paid on a salary basis. They also commonly receive annual bonuses that are on the order of five months' salary, although the exact size of the annual bonus varies somewhat in response to the firm's financial performance and management's assessment of the performance of individual workers.

Workers' pay grades are heavily influenced by seniority with the firm. The combination of **seniority-based pay** and the lifetime employment system produces a pay system in which age plays a heavy role. Thus, workers who perform identical jobs can receive pay rates that vary significantly as a function of their age and how their performance is evaluated.

Performance Appraisal

Another important feature of Japanese labor relations is frequent performance appraisals for blue-collar workers receive (many workers are assessed twice a year). In a given year, a worker who receives a top performance evaluation can receive up to a 10 percent larger pay increase than a worker who receives a poor performance appraisal. Over a worker's career, these appraisal-based pay differences can add up and produce sizable differences in pay levels across employees. A worker's promotion and career path is also heavily influenced by the cumulative effects of performance appraisals.

In the United States, in contrast, while many nonunion firms regularly appraise the performance of their employees, it is rare for blue-collar workers to undergo performance appraisals in traditional unionized settings.

Broad Job Definitions

Jobs in Japan tend to be defined relatively broadly on the shop floor, even for blue-collar workers. Broad job definitions go along with the practice of rotating workers across tasks and substantial training for the work force. In addition, the strong links between pay rates and the age and performance of each worker decrease the role of job task in determination of pay. Some analysts argue that the breadth of job definitions contributes significantly to the flexibility of the Japanese production system.[12]

The Role of Consultation in Japanese Labor Relations

The labor relations system in Japan relies heavily on informal **consultation** between labor and management to settle disputes. Grievance and arbitration procedures are often included in enterprise-level collective bargaining agreements, but these procedures are rarely used. Instead, grievances are typically settled through consultation at the work shop level. In addition, consultation over broader issues commonly occurs in labor-management committees that operate at the plant and company level. Workers also have input into shop floor production issues through the quality circles that often meet regularly.[13]

Union strength in these labor-management discussions is directly related to their membership and independence from management influence. One of the troubling issues confronting Japanese unions is declining membership. Union density in Japan stood at around 35 percent of the labor force from the early 1950s on through 1973. Since then, union membership (as a percentage of the work force) has fallen to 18 percent as of 2014.[14] Some analysts wonder if this decline is an inevitable product of enterprise unionism.

Debates continue about the extent to which enterprise unions are truly independent from management influence. This arises as an issue not only because of the enterprise nature of union structure but also because of the heavy role played by labor-management consultation in the Japanese system. Critics see in this consultation the co-optation of independent unionism, whereas others see an industrial relations system that successfully mediates conflict as it provides gains in the form of high levels of employee commitment, economic growth, pay, and employment security.

LABOR RELATIONS IN TRANSITIONING COUNTRIES

The next sections briefly review labor relations in four transitioning countries. Each of these countries has a large gross national product and developments in them well illustrate the issues that have been surfacing in other transitioning economies. Even though China, India, Brazil, and South Africa have achieved advanced levels of economic development and industrialization, their labor relations practices and procedures are more recent in origin and are in many ways in a state of flux.

We account for particular factors that play critical roles in these countries. For example, we take account of the fact that labor relations are much more political

in transitional economies than they are in advanced industrialized countries. We also look at the past role of state-dominated unions in transitional economies and the recent increased importance of independent unions that have emerged as alternatives to state-dominated unions in many of these countries. These independent unions tend to promote collective bargaining at the company or workplace level.

A key issue that underpins labor, management, and government interactions in transitional economies is the fact that questions of how to create and sustain more democratic and stable labor relations are a major political and economic issues. While in some countries unions have been dominated by governments or sharply limited in their influence, history suggests that outlawing truly independent unions (i.e., unions free from the dominance of governments or employers) does not eliminate labor conflict; rather, in some ways such a move only postpones and intensifies it. In the end, all countries are forced to wrestle with how to structure labor relations in a way that provides workers with enough representation to satisfy them while also maintaining social stability and economic growth.

The **informal sector** is also much more prevalent in transitional economies. In the informal sector, where formal collective negotiations may be absent. Collective forms of representation and collective methods of conflict resolution also are more varied in transitional economies, not only because they sometimes include works councils but also because concerns about labor rights have led to the involvement of various NGOs and other interest groups in workplace matters (see Chapter 14).

Brazil

The end of a military dictatorship and the enactment of a new constitution in 1988 ushered in the contemporary era in Brazilian employment relations.[15] The key change in Brazilian labor relations was that the state no longer significantly intervened in the internal affairs of unions, as it had in the past.

Following the return to democracy after 1988, the new constitution of Brazil and the labor code gave private sector and public sector workers the right to form trade unions (except for members of the military, uniformed police, firefighters, and some other state employees). Public sector workers could organize and strike (with certain limitations). Reform of the labor code gave job security to union leaders, reduced the maximum work week, increased overtime pay, and added profit-sharing provisions to the human resource practices of companies. After the constitutional reforms, there was growth in the number of union members, most of whom were civil servants who had previously been prohibited from forming unions. This growth in membership was accompanied by dramatic growth in the number of unions, creating increasing fragmentation in the union movement.

However, core aspects of the traditional Brazilian labor relations system remained unchanged and continue to this day. These include a limit on union formation to one union per economic activity per territorial unit and a union tax that all workers in unionized economic or sectoral categories (e.g., metalworkers, chemical workers) must pay regardless of whether they are union members. A portion of this union tax is paid to union federations and confederations.

Trade unions in Brazil have maintained their membership strength over the last decades and have increased their political influence through the Workers' Party. The rate of unionization has held steady at around 18–21 percent of the work force. Approximately twice this proportion of workers is covered by collective bargaining agreements. While the rate of unionization overall has remained steady, the rate of unionization in the manufacturing sector has been in decline. In contrast, public sector unionism has increased since the enactment of the 1988 constitution, which granted public sector employees unionization rights. However, the number of national trade union centers has increased, as has the number of small unions and unions that are outside the purview of the country's main labor confederation. This has contributed to the fragmentation of the labor movement.

In addition to these general trends, the **neoliberal reforms** that began in the 1990s, notably privatization and the removal of obstacles to free trade, have transformed and weakened the Brazilian labor movement. Increased market liberalization and industrial restructuring have dramatically affected the geography of industrial production in Brazil. Many major new plants that were built in the 1990s and early 2000s were situated outside the core industrial district of greater São Paulo, in regions where unions were weaker and wages were lower.

China

China's economic reforms, now in their fourth decade, have transformed the country from a planned economy to a mixed economy with elements of both market mechanisms and central planning.[16] While market mechanisms have become increasingly important in allocating resources, the state still plays a critical role in coordinating the economy, and its role has become even stronger since the 2008 global financial crisis.

Market-oriented reforms have significantly changed China's employment structure. While agricultural employment has declined significantly, employment in the industry and service sectors has sharply increased. Employment in state-owned enterprises has dropped from 60.4 percent of total formal employment in 1978 to 14.5 percent in 2010, whereas employment in the private sector, including private-owned companies, foreign-invested companies, and township and village companies, has rapidly increased.[17]

Along with the change in the structure of employment, there has been a transformation of labor relations in China. Under the planned economy, the Chinese labor relations system was extremely rigid and centralized. In general, workers in state-owned enterprises and collective-owned enterprises enjoyed lifetime employment, egalitarian wages, and cradle-to-grave welfare that included free housing, medical benefits, and pensions. Over the last three decades, however, the so-called iron rice bowl has gradually been smashed. First, there has been a change from lifetime employment to contract-based employment. In addition, management has autonomy in making hiring and firing decisions, although legal procedures must be followed and there are still significant limits on the ability of management to make large-scale dismissals in state-owned enterprises. Second, the state-administered reward system has been moving toward giving management

full autonomy to make decisions about wages. Although the state still intends to influence wage levels and growth at the macroeconomic level and in state-owned enterprises, this influence has been declining. Third, contributory social insurance schemes such as pensions, medical insurance, unemployment insurance, work injury insurance, and maternity insurance and housing funds have been introduced to replace the former cradle-to-grave welfare system. However, these benefit schemes have been introduced to varying degrees across sectors and regions and a huge number of workers—especially migrant workers—do not receive social benefits.

The All-China Federation of Trade Unions (ACFTU) is the only official union in China. Its pyramidal top-down structure consists of three tiers: the national, regional, and primary levels. At the bottom level, primary unions are organized at the company level. Regional-level unions are set up along industrial lines and within geographical boundaries with a structure parallel to that of the government administration. Trade unions at all levels are under the leadership of the Communist Party. This structure has remained largely unchanged since the 1950s. The ACFTU represents the interests of both the state and labor. At the workplace, unions perform two functions: they promote production and deal with social welfare issues.

The Chinese system of resolving labor disputes is characterized by mediation, arbitration, and two trials. When a labor dispute arises, the parties may bring the case to the company's labor dispute mediation committee. The second stage is arbitration, which is mandatory before the case can go before a court. If either party is dissatisfied with the arbitral award, they may enter the third stage and bring the case to a court. However, for certain types of cases (e.g., claims for small amounts of unpaid wages), the arbitral awards are final and binding. If either party is dissatisfied with the court verdict, they may appeal to a higher court, whose verdict is final.

India

India has long had an interventionist state. This is codified in the key labor relations law in India, the Industrial Disputes Act of 1947. Under this law the state can prohibit even a legal strike and refer any industrial dispute to compulsory arbitration or adjudication without the consent of the employers or unions. However, following a balance-of-payment crisis in 1991, the government of India embarked upon economic reforms that shifted the focus in national economic policies from import substitution (replacing foreign imports with domestic production) to a focus on exports.[18] In the 1990s, the policies of liberalization, privatization, and globalization marked a new era for India, which since then has had an inward-looking socialist-style economy based on a strategy of import substitution. This shift in economic policies has been successful.

The trade union movement in India is highly fragmented. Until the 1980s, most trade unions in India were affiliated with a political party through a national federation.

There are about 400 million workers in the Indian labor market. Of these, only about 7 percent are employed in the formal sector. The remaining 93 percent are employed in agriculture or in small and medium-size enterprises in the informal sector of the economy. Historically, politically affiliated unions have shown little or no interest in organizing workers in the informal sector and have concentrated on organizing and representing workers in the formal sector in both the public and private sectors. In recent years, many workers in the informal sector or those employed as casual and contract workers in the formal sector have formed their own politically independent unions, sometimes with the help of NGOs. KKPKP is an example of such a union (see Chapter 14).

Of the total labor force of around 400 million, about 28 million Indian workers are employed in the public sector and are covered by various pay commissions that decide on their wage levels. The government-appointed commissions hear representations from employer associations and trade unions. Thus, negotiations over wages in the public sector in India takes place within the limits and terms set by the pay awards sanctioned by the pay commissions.

South Africa

The early history of labor relations in South Africa was heavily influenced by the apartheid system that kept blacks and those of mixed race politically disenfranchised and out of skilled and higher-paying jobs.[19] By 1994, however, the democratic union movement had established itself as a major force in the labor relations system in South Africa. COSATU, which had fifteen affiliate unions in the mid-1990s, was by far the largest union confederation. Three other union confederations represent a mix of white-collar unions, white unions, and craft unions and account for most of the remainder of trade union membership.

The Labor Relations Act of 1995 (LRA), sought to replace the adversarial culture that had characterized labor relations with codetermination between employers and employees. This law has five key features. First, it brought all employees into a single system which created bargaining councils, where collective bargaining takes place. Critically, this enabled unions to have a say in work conditions across an entire industry, even covering employers with whom unions had no formal recognition agreement and/or in factories where a union had only a small presence. Importantly, the LRA extended the right to participate in bargaining councils to farm, domestic, and public employees, workers who had been excluded from the previous system of industrial councils.

Second, the LRA promoted collective bargaining by guaranteeing the right to organize to unions. It also gave unions access to employer premises, gave them the right to hold meetings, and allowed them to have **closed shops** (compulsory union membership agreements) under certain conditions. It also compelled employers to disclose information relevant to collective bargaining to unions that represent the majority of workers in a workplace. The law also protected the right of employees to strike, to picket, and to engage in sympathy strikes, although it also introduced compulsory procedures and timetables for dispute resolution.

Management in South Africa increasingly favors decentralized bargaining. The growth of informal employment has also served to undermine various councils and contributed to decentralization in bargaining.

Events at the platinum mines in Marikana in 2012, when police opened fire on striking miners, killing thirty-four and wounding seventy, well illustrate many of the tensions in the South African labor relations system. The unofficial strike at the Lonmin mine in Marikana involved some 3,000 workers. Workers had demanded a pay increase of up to 50 percent, well in excess of an existing agreement between COSATU's National Union of Mineworkers (NUM) and Lonmin. This demand was reflective of a far more general sense of worker discontent with wages and working conditions across the entire platinum mining belt.

Crucially, it appears that the NUM had lost the confidence of its workers, who had repudiated the union representatives who had been sent to negotiate with them to return to work. The leadership of the Association of Mineworkers and Construction Union (AMCU), a breakaway union from the NUM that the employer did not recognize, stepped in and replaced the NUM officials as the workers' representatives. The volatility of the situation, which was compounded by violence against those who wanted to work and against NUM officials, was ratcheted up by the initial refusal of the employer, the NUM, and the government to talk to AMCU, arguing that it lacked formal status.

Ultimately, however, in the aftermath of the shooting, the impasse gave way to concession. Eventually, six weeks after it had begun, the strike was brought to a close when Lonmin conceded a hefty 22 percent pay increase after negotiations that involved both the AMCU and the NUM. However, this failed to prevent labor unrest from spreading rapidly, and employers, unions, and the government scrambled to control strikes that were occurring across the entire mining sector.

These events in the platinum mining sector represent a major challenge to the South African labor relations system. First, they indicated the development of a yawning gap between miners and the leadership of the NUM. Workers accused NUM officials were accused of living comfortably while union members suffered. Second, they exposed an increasing gap between workers and the African National Congress. Workers accuse ANC leaders accused of siding with management and not attending to the needs of their core constituency. Third, they raised major questions about the role of the police, who were widely accused of reverting to apartheid-style reliance upon brute violence on behalf of the state. Finally, they posed serious problems for employers, who were ambivalent about the outcome of the strike.

THE IMPORTANCE OF THE PUBLIC SECTOR

The public sector in many advanced and transitional economies typically accounts for a significant share of the formal sector. In addition, public sector employees in these economies often are represented by unions. Public sector employers also generally follow the bureaucratic employment pattern (described in Chapter 5),

which is characterized by formal rules, structured pay and complaint procedures, and a relatively high degree of employment security.

However, since 2007 there has been a significant amount of privatization or "de-nationalization" that has shifted formerly public (i.e., "state") enterprises into the private sector or at least made those enterprises semi-private. This has led to significant changes in employment practices that include significant downsizing and the introduction of more market- and individualistic-type practices such as pay for performance. Workers who have jobs that were previously in the public sector have faced the insecurities more typical of the private sector. And since 2007, especially in transitional economies, public employees have faced or been threatened with even more drastic erosions of their wages, pensions, and other benefits and a further lessening of job security as part of **structural adjustment** policies.

AUSTERITY CRISES AND THEIR IMPACT ON LABOR RIGHTS AND CONDITIONS

A number of transitional economies have faced an economic crisis since 2007. In some instances such a crisis occurs at the time of a more widespread financial crisis across a region or even across the entire globe. These crises typically are precipitated when a country is unable to pay back loans from international agencies and external private banks and as a result, the country teeters on the brink of bankruptcy. In addition, in a number of countries, the unemployment rate and food prices rose sharply after 2007. International financial agencies such as the International Monetary Fund and the World Bank then become involved in the crisis by tying new loans to austerity measures that typically include large cutbacks in government spending, increases in taxes, wage cuts, and privatization of state-owned enterprises. These and other reforms that international financial agencies insist upon as a condition for making new loans to a country experiencing economic crisis are referred to as structural adjustment.

Structural adjustment reforms they critically affect economic conditions; have severe consequences for the population, especially public employees, and have wider economic and social consequences. There are deep debates about structural adjustment, including about what caused the particular economic and financial crisis in the first place, whether the austerity measures the international financial agencies insist upon are effective or self-defeating, and whether it is fair or appropriate that public employees bear a heavy burden as part of a structural adjustment plan.

The Recent Austerity Crisis in Greece and Its Consequences for Labor Relations

After the 2008 global financial crisis, Greece was nearing bankruptcy and economic collapse. The so-called troika—the International Monetary Fund, the European Central Bank, and the European Commission—imposed harsh conditions of austerity on Greece as a condition of a bailout from the European Union. Among

other measures, these demands included a restructuring of Greece's labor relations system.

Since the early 1990s, the Greek labor relations system had operated as a top-down hierarchy of collective bargaining. At the top level, national labor and employer groups, aided by the government, bargained for a national agreement that set a minimum wage floor and other basic standards for employment. At the next level were many multiemployer industrial agreements. The government reserved the right to extend coverage of these agreements to employers as it deemed appropriate. Thus, in addition to the national agreement, about 65 percent of workers were covered under multiemployer collective bargaining agreements. At the next level, individual employers could bargain with union organizations to build upon the national negotiations. The system was hierarchical because collective bargaining at any level could build upon a deal established at a higher level but could not legally set a wage below the floor set by an agreement at a higher tier.

The troika determined that a lack of competitiveness was the underlying issue causing Greek's economic crisis. It pressured the Greek government to restructure the labor relations regime. From 2010 to 2012, Greece passed several laws that restricted collective bargaining rights. Instead of being determined by the national collective bargaining agreement, the national minimum wage is now set by law. The national agreement also no longer covers employers who are not members of the employer associations involved in the negotiations. Nonunion employee groups, or "associations of persons," can now enter into agreements with employers.

Clearly, these changes have significantly weakened the bargaining power of unions in the country. Allowing employers to opt out of the national- and industrial-level agreements and enabling them to negotiate with smaller "associations of persons" rapidly decentralized the once highly centralized labor relations system. In just three years, the number of industry-level negotiations fell from 65 to 14. The result of this decentralization, unsurprisingly, has been a reduction in wages. The national minimum wage, which is now set by the legislature rather than by a collective bargaining agreement, has been cut by 22 percent (32 percent for those under 25 years old).[20]

Protests and Strikes over Austerity in Greece

Unions and citizens have engaged in protests and strikes (including a general strike) against the Greek austerity plans to no avail. Their protests were strengthened by accusations that bond holders and other creditors did not absorb much of a penalty as a result of the austerity plans and that instead, Greek citizens and public employees bore the bulk of the costs the austerity plans imposed.

The severity of the economic decline that followed the austerity plans imposed in Greece added evidence to support arguments that the austerity measures were not only too extreme, they were actually self-defeating. Opponents of the austerity plan proposed a renegotiation of bond holdings (essentially a managed default) that would make banks that had fueled the speculative boom that preceded (and

possibly caused) Greece's financial crisis responsible for more of the cost of the adjustment process.

THE CONTRIBUTION OF LABOR RELATIONS TO ECONOMIC PERFORMANCE IN COMPARATIVE PERSPECTIVE

There are long-standing debates about whether any economic system outperforms other systems and about what contribution labor relations makes to economic performance. These debates ebb and flow with the ups and downs of the economic fortunes of various countries. In the 1980s, reflecting Japan's strong economic and export growth, some analysts heralded the Japanese economic system. Others claimed that the Japanese labor relations system played a key role in Japan's economic success by stimulating employee loyalty and problem solving. The German economic and labor relations system also received much praise in the 1980s, on the grounds that the codetermination system facilitated conflict resolution and the development of skills.

In the 1990s, this debate shifted in response to strong economic performance, particularly price stability and employment growth, in the United States. The U.S. economic system then began to receive praise for its flexibility and promotion of entrepreneurialism. As the unemployment rate dropped to historic lows in the late 1990s, some analysts claimed that traditional internal labor markets had been replaced by "boundaryless" careers (i.e., frequent job changes).[21] In addition, the tightening of labor markets led to accelerated wage growth, particularly among highly skilled employees such as software programmers and high-tech engineers.

This debate shifted once again in recent years, given the relatively weak economic recovery from the 2008–2009 financial crisis that occurred in Europe, especially when compared to the U.S. recovery. Once again arguments are being made that a U.S.-style market system is superior to other systems. However, the increased income inequality that has emerged in the United States has led others to question the virtues of the U.S. economic and labor relations systems.

Summary

Around the world, there are substantial differences in the way labor relations are practiced. In the United States, collective bargaining is relatively decentralized and written collective bargaining agreements play a central role. The U.S. collective bargaining system is also noteworthy for its heavy reliance on grievance and arbitration procedures.

In Germany, by contrast, codetermination procedures are central. Both unions and works councils provide representation for employees. Collective bargaining in Germany usually occurs on a regional or industry basis and produces annual labor agreements.

In Japan, enterprise unions are dominant. These unions represent both blue- and white-collar employees in a firm. Disputes tend to be settled and information exchanged through a variety of consultative procedures. Worker seniority and the economic performance of the firm influence worker earnings, and annual bonuses are an important share of worker compensation.

The labor relations systems in transitional countries have some common features such as a large role for the informal sector and labor movements that often have strong ties to political parties. However, there are distinctive features in the systems of each transitional country, such as the traditional heavy reliance on an "iron rice bowl mentality" in China and the legacy of apartheid in South Africa.

However, there are some common trends in transitional countries. In most of the countries mentioned in this chapter, there is movement toward more decentralized collective bargaining and ominous declines in the strength of the labor movement.

Interest in international comparisons of management and labor practices is currently at an all-time high, spurred in part by the expansion of multinational firms and regional trading blocs. The process of collective bargaining and the determinants of bargaining power do not change fundamentally as a firm becomes multinational. However, the bargaining leverage of unions is generally weakened as firms expand production across country borders. It remains to be seen how well high-wage countries will be able to protect their high employment standards in the face of heightened international trade.

All countries must wrestle with the issue of how to structure labor relations. While collective bargaining and unions flourished in the past, the pressures of globalization are raising questions about the future viability of these institutions. However, countries that lack stable labor relations due to government suppression of a country's labor movement must face the fact that free and independent labor movements have been central to the development of democracy throughout history.

Discussion Questions

1. Briefly describe how codetermination works in Germany.
2. Describe three significant ways industrial relations in Japan differ from labor relations in the United States.
3. What role did unions play in the end of apartheid in South Africa? What are the public policy implications of the links between unions and democratization in both transitioning and fully industrialized countries?
4. What conclusions do you draw regarding whether labor relations practices and system features influence a country's overall economic performance?

Related Web Sites

ILO Legal Database on Industrial Relations (ILRlex):
http://www.ilo.org/global/docs/WCMS_507552/lang–en/index.htm

ACFTU organizational structure:
http://en.acftu.org/28590/201408/11/140811135244209.shtml

German Trade Union Confederation (DGB):
http://en.dgb.de

Suggested Supplemental Readings

Anner, Mark. *Solidarity Transformed: Labor's Responses to Globalization and Crisis in Latin America*. Ithaca, N.Y.: ILR Press, 2011.

Bamber, Greg J., Russell D. Lansbury, Nick Wailes, and Chris F. Wright, eds. *International & Comparative Employment Relations: National Regulation, Global Changes*. 6th ed. Los Angeles: Sage, 2016.

Frege, Carola, and John Kelly eds., *Comparative Employment Relations in the Global Economy*. New York: Routledge, 2013.

Katz, Harry C., Thomas A. Kochan, and Alexander J. S. Colvin. *Labor Relations in a Globalizing World*. Ithaca, N.Y.: ILR Press, 2015.

Notes

1. Throughout this chapter, we refer to Germany, even though some of the history recounted refers to the history of West Germany. After the unification of Germany, the national laws of West Germany were extended to what was previously East Germany, including laws about industrial relations. Unification brought substantial changes to labor relations practices and institutions in what was formerly East Germany.

2. Discussion of the various labor laws that exist in transitioning countries is found in Harry C. Katz, Thomas A. Kochan, and Alexander J. S. Colvin, *Labor Relations in a Globalizing World* (Ithaca, N.Y.: ILR Press, 2015): Chapter 3.

3. This section draws heavily from Berndt Keller and Anja Kirsch, "Industrial Relations in Germany," in *International & Comparative Employment Relations: National Regulation, Global Changes*, 6th ed., ed. Greg Bamber, Russell D. Lansbury, Nick Wailes, and Chris F. Wright (Los Angeles: Sage, 2015), 179–207.

4. Greg J. Bamber, Russell D. Lansbury, Nick Wailes, and Chris Wright report on union membership as a proportion of the work force and collective bargaining coverage in a number of countries in Figure 1.1, "Comparative Union Density and Collective Bargaining Coverage," in "Introduction," in *International & Comparative Employment Relations: National Regulation, Global Changes*, 6th ed., ed. Greg Bamber, Russell D. Lansbury, Nick Wailes, and Chris F. Wright (Los Angeles: Sage, 2015), 7.

5. The DGB had seventeen eight affiliated unions with 6 million members in 2011. See DGB: German Trade Union Confederation, http://en.dgb.de.

6. The Confederation of German Employers' Associations (BDA) is the employer counterpart to the DGB. It includes forty-six branch employer federations that engage in collective bargaining. One important exception is the negotiation of a companywide collective bargaining agreement at Volkswagen. This is because of the special financial and legal status of Volkswagen.

7. Enterprise unions are 94.9 percent of all trade unions in Japan and represent 85.6 percent of organized employees.

8. In 1982, labor federations in the private sector joined together to form Zenminrokyo (the Japanese Private Sector Trade Union Council). In 1989, most private and public sector unions became affiliated with the new Rengo (Japanese Trade Union Confederation). See *Labor-Management Relations in Japan* (Tokyo: Japan Institute of Labor, 1990), 19, Figure 2.

9. It remains to be seen if this sort of career movement continues in the future. It may not, due to the professionalization of managerial training and career development.

10. The modern-day extension of the traditional *zaibatsu* system often links large and small firms in close business relations. For example, upon their retirement from the large "parent" firm, senior executives often move on to serve as executives of one of the smaller firms in the same group.

11. Sanford M. Jacoby, *The Embedded Corporation: Governance and Employment Relations in Japan and the United States* (Princeton, N.J.: Princeton University Press, 2007).

12. See Michael J. Piore and Charles F. Sabel, *The Second Industrial Divide* (New York: Basic Books, 1984).

13. An informative account of life on the shop floor in Japan is provided in Robert E. Cole, *Japanese Blue Collar* (Berkeley: University of California Press, 1971).

14. "Trade Union Density," OECD.Stat, https://stats.oecd.org/Index.aspx?DataSetCode=UN_DEN.

15. This section draws heavily from Mark Anner and João Paulo Cândia Veiga, "Brazil," in *Comparative Employment Relations in the Global Economy*, ed. Carola Frege and John Kelley (New York: Routledge, 2013).

16. This section draws heavily from Mingwei Liu, "China," in *Comparative Employment Relations in the Global Economy*, ed. Carola Frege and John Kelley (New York: Routledge, 2013), 324–347.

17. Ibid.

18. This section draws heavily from Vidu Badigannavar, "India," in *Comparative Employment Relations in the Global Economy*, ed. Carola Frege and John Kelley (New York: Routledge, 2013), 305–323.

19. This section draws heavily from Roger Southall, "South Africa," in *Comparative Employment Relations in the Global Economy*, ed. Carola Frege and John Kelley (New York: Routledge, 2013), 348–366.

20. "Workplace Representation," *worker-participation.eu: A Service of the European Trade Union Institute*, 2015, http://www.worker-participation.eu/National-Industrial-Relations/Across-Europe/Workplace-Representation2.

21. Anda Stamati, "Greece: Impact of the Crisis on Industrial Relations," *EuroFound: European Foundation for the Improvement of Living and Working Conditions*, June 17, 2013, http://www.eurofound.europa.eu/observatories/eurwork/comparative-information/national-contributions/greece/greece-impact-of-the-crisis-on-industrial-relations.

16 The Future of U.S. Labor Policy and Labor Relations

FUTURE CHALLENGES

One key finding of this book is that changes in the external environment are challenging many traditional collective bargaining practices in the United States. Since the 1980s, there has been much experimentation in labor relations among a significant number of companies and unions and worker advocacy groups. At the same time, conflicts have emerged between a number of unions and employers and the nation has experienced a significant decline in union representation.

Which of these three developments will dominate labor relations in the future? Will experiments with new forms of worker voice and representation, participation, and labor-management partnerships diffuse and become the foundations for a new model of U.S. industrial relations? Or will unionism continue to decline and will new models of representation fail to grow as labor and management remain locked in a stalemate over the future of national labor policy?

Or will the profound changes occurring in the work force, the nature of work, the role of the corporation, and the relationship between work and family life result in broader changes in employment and regulatory policies that reshape the labor relations system of the twenty-first century? These are some of the key questions facing policymakers and labor relations professionals today. As we examine these issues in this chapter, we identify some different paths labor relations might take in the years ahead and share our own views on these questions.

When considering future possibilities, it is necessary to examine the various channels through which the government can influence the conduct of collective bargaining. The most important federal statute that affects collective bargaining is the National Labor Relations Act. Government labor policy includes administration of this statute and other statutes dealing with collective bargaining such as the Railway Labor Act.

The nation's labor policy is also shaped by an array of regulations that govern employment conditions, training, and other aspects of the labor market. Labor relations and employment conditions also are affected by economic and social policies. The social security system, for example, affects the earnings and retirement decisions of workers. And state and local government laws and ordinances are

Table 16.1 Selected components of national, state, and local labor policies

(A) *General economic and social policies*	*(B)* *Labor relations policies*	*(C)* *Employment and human resource policies*
Aggregate monetary and fiscal policies	Railway Labor Act	Wage and hours legislation (e.g., Fair Labor Standards Act, Davis-Bacon Act)
Incomes policies	Norris-LaGuardia Act	Equal employment opportunity laws, regulations, and enforcement efforts
Trade policies	Wagner Act	Occupational Safety and Health Act
Immigration policies	Taft-Hartley Act	Employee Retirement Income Security Act
Antitrust policies	Landrum-Griffin Act	Unemployment insurance system
Regulation of multinational corporations	Civil Service Reform Act of 1978, Title VII of Civil Rights Act of 1964	Social security system
Environmental protection policies	Postal Reorganization Act of 1970, Public Law 91-375	Workers' compensation system
Energy policies	State employee bargaining laws and policies	Job Training Partnership Act and related employment adjustment programs
Productivity improvement and capital formation policie		Programs to improve labor-management cooperation
Industry regulatory policies (hospitals, transportation, etc.)		Family and medical leave policies
Welfare policies		Living wage and state minimum wage policies
Corporate governance regulations		

playing more and more significant roles in the regulation of employment practices, in large part because of the political stalemate over federal policies.

Thus, national labor policy, defined broadly, includes general economic and social policies, labor relations policies, and employment and human resource policies. Table 16.1 outlines the key components of our current national labor policy.

THE HISTORY OF GOVERNMENT-PROMOTED LABOR-MANAGEMENT DIALOGUE

There have been very few successful efforts to create a national dialogue about labor policies in the United States. We review the major efforts to create

labor-management dialogue and the results of such efforts below. We also look at an emerging trend toward expanding the array of voices engaged in discussions about the future of work and the future of labor policy.

National-Level Committees

From the 1930s through the 1990s, labor policy discussions were largely limited to representatives of business, labor, and, in some cases, government. While input from other groups and the public was sometimes sought, serious debates and efforts to reach compromise or consensus tended to come down to discussions among these three large groups. At the turn of the twentieth century, for example, various national investigative commissions examined labor conditions and problems. National labor relations commissions issued reports in 1880, 1902, and 1915. The 1915 commission, for example, cited the absence of industrial democracy and inadequate working conditions as two of the most serious social problems of the time. The reports of these commissions were used as background material by those who wrote the New Deal labor legislation in the 1930s.[1]

Other labor-management committees were created during wartime. Presidents Woodrow Wilson and Franklin Roosevelt created national war labor boards to promote labor peace and wage stability during World Wars I and II, respectively. These boards were generally successful in fulfilling their mandate during wartime. Both, however, failed to keep labor and management working together at the national level after the wars. In 1945, for example, following the end of World War II, President Truman called labor and management representatives together in a national conference to try to work out principles for continuing the cooperation achieved during the war. But efforts to reach an accord broke down over labor's demand for a commitment to union security and management's demand for some stated limit on the scope of labor's influence over employment issues.

While every president from the 1930s through the 1960s established one or more top-level labor-management advisory committees to deal with various issues, this tradition was abandoned in the 1970s and has not been renewed. Instead, several private national-level committees have been formed in recent years.

Some of the committees that functioned with government encouragement continued to meet privately after the public effort dissolved. For example, the top-level committee that functioned in 1974–1975 when John Dunlop was secretary of labor continued to meet under private auspices with Dunlop as chair for years after he left office. This group discussed various labor policy issues beyond collective bargaining problems. Their view was that collective bargaining issues are best discussed at more decentralized levels between the parties that are directly involved. Bargaining issues, they believed, are too controversial to be settled through national labor-management dialogue.

In 1985, Malcolm Lovell, a former undersecretary of labor, established the Collective Bargaining Forum, a group composed of top union and corporate leaders. The forum, which continued to meet until 2005, discussed long-term strategies for improving collective bargaining. Box 16.1 includes excerpts from one of the forum's reports.

BOX 16.1
Toward a New Labor-Management Compact

In 1988, the Collective Bargaining Forum (an informal working group of major union and corporate leaders) adopted a statement of principles. The statement includes the following:

> We recognize that the institution of collective bargaining is an integral part of American economic life. We recognize that unions cannot be expected to expand their work with management to improve the economic performance of domestic enterprises and to help those firms adopt to technological, market, and other changes, if they are not accepted by employers and public policy makers as having a legitimate and valued role in the strategic decisions of the enterprise and in public policy making. It was also clear to us that employers need to expand their cooperative efforts with unions to revitalize U.S. industry and retain and expand opportunities for secure well-paid jobs for American workers. . . . The Forum, therefore urges adherence to the following principles:

Acceptance in practice by American management both of the legitimacy of unions and a broader role for worker and union participation.

Acceptance in practice by American unions of their responsibility to work with management to improve the economic performance of their enterprises, in ways that serve the interests of workers, consumers, stockholders, and society.

Encouragement of a public policy which assures choice, free from any coercion, in determining whether to be represented by a union and which is conducive to labor-management relations based on mutual respect and trust at all levels.

Acceptance by American corporations of employment security, the continuity of employment for its work force, as a major policy objective that will figure as importantly in the planning process as product development, marketing, and capital requirements.

The Forum also developed a Compact covering procedures needed to put its principles into practice. This compact suggests a new set of obligations and responsibilities that transcend and expand traditional collective bargaining relationships. The Compact states, "Our purpose is to formulate standards or 'rules of the game' with respect to certain fundamental aspects of the relationship." The Compact suggests standards for governing joint efforts to improve the economic performance of U.S. enterprises: acceptance of unions within companies and in U.S. society; the promotion of employment security, worker participation, and worker empowerment; improved conflict resolution; diffusion of innovations in labor management relations; and development of common positions on public policy issues.

While the companies and unions that signed this Compact generally remained committed to it throughout the years the forum was active, the Compact generated little attention with other companies and unions and, like other national groups, had a limited lifespan.

Source: Labor-Management Commitment: A Compact for Change, Views from the Collective Bargaining Forum," U.S. Department of Labor, Bureau of Labor Management Relations and Cooperative Programs, Report No. 141, 1991.

Overall, national business-labor forums have had little direct effect on the practice of collective bargaining. Several factors have made it difficult to change labor relations through national-level dialogue in the United States. These include the highly decentralized structure of U.S. collective bargaining, the absence of a unified strategic view within the labor movement or the business community over labor issues, and, in some cases, deep-seated ideological disagreements between labor and business leaders over labor policy. On the other hand, these forums build personal and professional relationships among top-level business and labor leaders that can be drawn on to address problems or respond to national crises. Nevertheless, the absence of any functioning national dialogue forums may limit the nation's capacity to mobilize broad-based support for labor policies in the future.

Local and Regional Government Dialogues

There have also been efforts to promote labor-management dialogue at the local and regional levels of the country. These labor-management committees usually include representatives from labor and management and community politicians. Almost all have been started with the leadership of one individual.[2] The Jamestown, New York, committee, for example, developed largely out of the efforts of the former mayor of the city.

Area (local or regional) committees have tended to grow out of an economic crisis, such as plant closings. This was the motivation in Jamestown. In a few communities, such as Toledo, Ohio, the initial stimulus was a high number of strikes.

Area committees have mobilized community resources to attract new business and have encouraged local education institutions to respond better to industrial needs. Area committees also have attracted federal and state economic development funds. Such committees, however, rarely have been able to convince employers or local unions to change collective bargaining practices. Plant-level managers and union officers often reject the recommendation of area committees that they institute collective bargaining on the grounds that they interfere with their prerogatives. Nonetheless, involvement in civic affairs has proven to be a useful network-building activity for local union and management leaders. Relationships developed

through involvement in community affairs have helped many union leaders build coalitions with immigrant groups, religious leaders, and elected officials that have supported organizing campaigns and bargaining processes.

The Limits and Contributions of Labor-Management Dialogue

Our participation in a variety of national and area labor–management committees has left us with ambivalent feelings about their potential contributions. None of these efforts seem to be producing reforms sufficient to stem job losses or slow declines in union membership, none have changed the attitudes of employers who are ideologically opposed to unionization, none have produced a new coherent strategy to foster employee participation, and none have produced a consensus about what changes are needed in national labor policy. They have, however, been helpful in solving specific problems and building trust among leaders who otherwise might not know each other. The decline in the number of these network-building forums, therefore, is another worrisome development in U.S. labor relations.

Concern about the future of work has led a number of groups, from the U.S. Department of Labor to universities such as Cornell, MIT, and others, and various think tanks and foundations to bring diverse stakeholders together to discuss ways to improve the future of work. These meetings often include labor and business leaders but are not limited to these two groups. They tend to include men and women, immigrants, racial minorities, entrepreneurs, representatives of various new worker advocacy groups, and experts in new emerging technologies. The growing popularity and number of such gatherings signal a recognition that the voices of all of these groups (and perhaps others) will be heard in future discussions of labor and work force policies.

LABOR POLICY REFORM EFFORTS

American labor law does not change often or easily. The National Labor Relations Act was passed as one of the last major reform efforts of the New Deal. It took the deep economic and social crisis of the Great Depression and the fear that American-style capitalism might be at risk to build the political support necessary to pass that legislation. In 1947, in response to a wave of strikes, the Taft-Hartley amendments to the NLRA were passed to rebalance power by limiting the use of secondary boycotts, closed-shop clauses, and other actions deemed to be unfair union bargaining practices. A series of widely publicized union corruption scandals are what led to the Landrum-Griffin Act in 1959.

Efforts to update or amend labor law in the absence of a deep crisis have been largely unsuccessful. For example, in 1977 the Carter administration failed to pass labor law reforms aimed at stiffening the penalties for employers that violate the rights of workers in organizing campaigns. There has been a general stalemate in efforts to reform and update national labor policy that dates back almost forty years to the failed effort to enact labor law reform in 1977–1978.

The Dunlop Commission

An important attempt was made to resolve the long-standing impasse over labor policy when the Clinton administration took office in 1993. The new administration established the national-level Commission on the Future of Worker-Management Relations (known as the Dunlop Commission, since former labor secretary John T. Dunlop chaired the commission) to recommend ways to update national labor policies in ways that would improve the nation's competitiveness and raise workers' standards of living.

The commission was charged with answering the following questions:

1. What (if any) new methods or institutions should be encouraged, or required, to improve workplace productivity through labor-management cooperation and employee participation?
2. What (if any) changes should be made in the present legal framework and practices of collective bargaining to increase cooperative behavior, improve productivity, and reduce conflict and delay?
3. What (if anything) should be done to increase the extent to which workplace problems are directly resolved by the parties themselves rather than through recourse to state and federal courts and government regulatory bodies?[3]

The commission issued two reports: (1) a fact-finding report in which it reviewed the current state of labor-management relations and arrayed the evidence presented to it; and (2) a final report and recommendations that outlined its proposals for reform.[4] Box 16.2 summarizes the major recommendations in the final report.

However, the Dunlop Commission's recommendations gained no support from business, labor, or government officials. Why was this the case? Two reasons can be suggested.

First, the recommendations sought to find a compromise within the existing framework of the National Labor Relations Act that would be acceptable to both business and labor. Essentially the compromise was to loosen the constraints on employee participation firms could implement in nonunion settings (something of great interest to the business community) and to strengthen the protection of workers seeking to organize a union. The evidence presented in the commission's fact-finding report documented the need for both of these changes. But neither labor nor business were willing to make these compromises in their positions.

Second, the shift in control of Congress from a Democratic to a Republican majority that occurred in November 1994 in the midst of the commission's work ended any hope that it could build enough support for a change in national labor policy. This shift in political power further polarized the positions of both business and labor. Labor leaders made the judgment that they could not get the Republican Congress to seriously consider any changes in labor law that might benefit workers or unions; thus, they preferred to remain with the status quo. Business leaders concluded they could go to Republicans in Congress directly and lobby for only the changes in labor law they favored; thus, they preferred to see the commission's recommendations ignored.

BOX 16.2
Recommendations of the Dunlop Commission

- Facilitate growth of employee involvement in workplace improvement teams or committees by clarifying Section 8(a)(2) of the NLRA.
- Continue the ban on company unions.
- Reduce the scope of exclusions from NLRA coverage for supervisors and managers.
- Authorize use of pre-hire agreements when an employer opens new operations.
- Hold union representation elections before legal challenges to bargaining units from either employers or unions are resolved by the NLRB.
- Use court injunctions to remedy discrimination against workers in organizing campaigns.
- Use mediation and, when necessary, arbitration to resolve disputes over first contracts.
- Increase the access unions have to employees during the organizing process.
- Encourage companies to adopt alternative dispute resolution (ADR) programs.
- Support voluntary use of arbitration to resolve disputes over statutory rights.
- Require arbitration systems to meet specific standards relating to quality and due process.
- Encourage employee participation in the development/administration of ADR systems.
- Forbid agreements that make arbitration for statutory disputes a condition of employment.
- Simplify and standard the legal definitions of "employee," and "independent contractor."
- Use an economic realities test to separate independent contractors from employees.
- Use an economic realities test to determine the employer of contingent workers.
- Expand "single" and "joint" employer definitions to clarify whether one or both employers are responsible for complying with labor law.
- Expand the use of negotiated rulemaking by the NLRB when developing new workplace regulations.
- Promote self-regulation of workplaces where high-quality ADR systems are in place.
- Create national and local forums to promote ongoing learning and dialogue between labor and management.

Source: *Final Report and Recommendations of the Commission on the Future of Worker Management Relations* (Washington, D.C.: U.S. Department of Labor, 1995).

The key conclusion from this experience is that no compromise deal exists that would be acceptable to labor and management within the existing structure of labor law. Thus, neither leaders in Congress nor in the Clinton administration demonstrated an interest in or a willingness to take up these issues on their own in the face of the ongoing stalemate between labor and business. In fact, the issues once again went off the national agenda altogether, along with most other employment policy issues.[5]

When Barack Obama was elected in 2008, the labor movement hoped to achieve labor law reform by promoting the Employee Free Choice bill, which would have allowed card check recognition (see chapter 3) to suffice as a demonstration that a majority of workers in a bargaining unit wanted representation. While the House of Representatives passed the bill, it failed to muster the sixty votes needed in the Senate to break a Republican filibuster against the bill.

ALTERNATIVE DIRECTIONS FOR FUTURE NATIONAL LABOR POLICY

If major reforms in collective bargaining will not come from the normal policymaking processes of government or from labor-management committees, one might reasonably ask what might lead to such changes.

One answer to this question is that changes must come from outside the interest-group structure that perpetuates the current system. Recall that the ideas behind the New Deal labor relations system did not come from organized labor or business; they came from the institutional economists who had studied labor problems for over thirty years before the Wagner Act was passed. It may be that we are in a similar situation now. The logjam over labor policy will require ideas that in the short run may not be completely acceptable to either (or certainly not to both) labor or management but that need to be developed by people or groups willing to consider new approaches to labor policy. We will consider this as one potential direction for future labor policy.

There are three possible strategic directions for future national labor policy. One approach would continue the labor policies of the last twenty years. The emphasis would be on further deregulation of product markets and reliance on the market to determine employment conditions. This strategy would emphasize the policies shown in column A of Table 16.1 and deemphasize the policies in columns B and C.

Alternatively, the strategy could focus on the policies in column B and marginally reform the National Labor Relations Act by attempting to revive the deliberations started in the Dunlop Commission or by reintroducing a modified Employee Free Choice bill or some other bill that revises but does not fundamentally change or expand on the doctrines in existing law.

A third policy approach would recognize that much more fundamental changes in national policies are needed and would see labor policy reform as part of a broad effort to promote a new social contract for the workplace that updates the full range of employment practices to reflect changes in the economy, in

technologies, in characteristics of the work force, and in how work is done today. If stakeholders could reframe the policy debate and broaden who is involved in the debate, it might be possible to remove the label of "special interest politics" that has been used to describe labor policy discussions. A broad policy debate has the potential to address the fading belief in the American Dream, a dream that had held that each generation should experience an improved standard of living.

The three policy approaches are discussed in more detail below.

Strategy 1: Reliance on Deregulation and the Market

One strategy for national labor policy would involve extension of the deregulation wave that began in the late 1970s and has continued to some degree ever since. The primary objective of deregulation is to increase competition in a product market. Thus, this first strategy would seek to further limit federal regulations.

The federal government has been reducing regulation of the labor market since the mid-1970s. From 1960 to 1975, the number of employment regulations administered by the U.S. Department of Labor tripled.[6] However, except for the WARN Act of 1989 and the Family and Medical Leave Act of 1993, no major new labor regulations have been enacted since 1975, when the deregulation era began.

In addition, over the last forty years, funding for many social welfare and employment programs has been frozen, reduced, or conservatively administered.[7] The federal budget for employment and training activities, for example, was cut substantially until it received a major infusion of funds as part of the Obama administration's stimulus bill that was designed to counter the effects of the Great Recession of the late 2000s and early 2010s. Another example of cutbacks is the fact that the number of Occupational Safety and Health Administration employees was reduced by 25 percent in the early 1980s alone. Although President Obama rebuilt staffing for both OSHA and the Wage and Hour Division of the U.S. Department of Labor during his eight years in office, the number of inspectors has not kept up with the growth in the labor force or the number of workplaces covered under these laws. Welfare benefits were dramatically altered in the 1990s by placing lifetime limits on the length of time individuals would qualify, implementing work requirements, and eliminating benefits for many immigrants. Thus, under this first policy approach, funding cuts or freezes such as these would continue to be enacted for programs that affect workers.

The Case for Further Deregulation

Why not extend deregulation policies and allow market forces even freer rein to determine employment conditions? The basic argument in favor of product market deregulation and limited labor market regulation is twofold. The first part of this argument is that market forces allocate labor extremely efficiently, in part because of the pressure the market puts on labor and management to maximize profits.

A second part of this argument is that if market pressures are blocked, inefficient practices can develop. If that happens, society will bear the cost of the output

that will be lost from misallocated resources. In addition the parties who will absorb the costs of later adjustments to market pressures may need help from federal or state governments at some point. Some would extend this argument to further suggest that today's global economy makes regulation of domestic labor or product markets futile since businesses can outsource work to lower-cost or less-regulated countries if regulations become too burdensome on businesses.[8]

Even if one does not like the outcomes market forces generate, it is not clear that appropriate alternative policies can be successfully designed or implemented. This is another recommendation for limited regulation of product and labor markets.

Criticisms of a Market and Deregulation Policy Approach

Those who argue for reliance on market forces and a deregulation policy approach presume that the market will lead to outcomes that society will find acceptable. Recent debates over trade agreements (see Box 14.4 on the Trans-Pacific Partnership Trade Agreement) have focused on the gap between the higher-income segments of populations, who tend to be the beneficiaries of free trade, and the middle- to lower-income workers who absorb a disproportionate amount of the losses of jobs and income due to international free trade. These distributional aspects of deregulation strategies are now recognized as issues that need to be addressed even by those who generally favor this strategy. Similarly, attention has focused on the limited health care benefits Walmart gives its employees and accusations that in many other ways, Walmart has taken advantage of its market power by not paying wages or benefits sufficient to keep a significant number of its employees off food stamps and other forms of public assistance (see Box 16.3). Critics worry that an unregulated market will lead to a "Walmartization" of the U.S. employment system.

Normative arguments against reliance on the market alone to determine employment conditions were articulated in the early years of this century by institutional economists of the Wisconsin School. The institutionalists stressed that labor is more than an economic commodity and that conflicts of interest between employees and employers are inherent and enduring. Put simply, competitive labor markets may leave too many workers in a weak bargaining position with their employers and give workers too little job security.

For these reasons, the early institutional economists supported policies designed to allow workers to accumulate what they called "property rights," that is, the longer a person's tenure on a given job or with a given employer is, the more rights they should have in times of layoffs or other changes that might affect their employment. The institutionalists believed that such a policy would be equitable. Moreover, they argued that if the workplace is to reflect the democratic values of the broader society, employees should have a chance to influence management decisions that affect employment conditions.

The Potential Consequences of Further Declines in Union Membership

One might also wonder what will happen if union representation continues to shrink. If union decline continues, management's abuse of its power might

BOX 16.3

Employment Law and Labor Relations Issues at Walmart

Starting in 2002, a large number of class actions were brought against Walmart for violating state-level wage and hour provisions by failing to pay for overtime work or for work done during required meal or rest breaks. In an early case, a California jury forced Walmart to write a check for $172 million, to be split by 116,000 Walmart Inc. employees who were forced to work through their allotted 30-minute unpaid meal breaks. The world's largest retailer owes these individuals $57 million in wages for missed meal periods, in addition to $115 million in punitive damages. After review of Walmart Inc.'s documentation, it was ruled that corporate leaders have been aware of the situation since 1998 and have taken steps to conceal the issue. That case was followed by convictions for similar violations in Massachusetts, Minnesota, and other states and led to a series of multi-state settlements that cost the company nearly $1 billion. Walmart has since invested in new technology to alert cashiers when it is time for their meal breaks and to automatically shut down registers if employees do not leave on break after a certain period of time.

Walmart also encountered legal difficulties concerning the hiring and working conditions of undocumented workers at its facilities. A raid of twenty-one Walmart stores in 2003 resulted in the arrest of 250 undocumented immigrant workers by the Department of Homeland Security's Bureau of Immigration and Customs Enforcement. Walmart may face both civil and criminal penalties for their failure to abide by U.S. immigration law.

Walmart has also been targeted by Walmart Watch, a union and community coalition, in a campaign to increase wages and has experienced one-day walkouts on Black Friday, the big shopping day following the Thanksgiving holiday.

Despite these numerous employment law disputes and collective protests, Walmart has remained nonunion throughout the United States. It has, however, increased wages in annual increments in 2015 and 2016 in an effort to respond to these pressures and to adjust to tighter labor markets. Although no Walmart employees in the United States are organized, this is not the case in Walmart stores in other parts of the world. Many employees in South American and British Walmart sites are unionized, and every Walmart Supercenter in Germany is organized. In addition, the Quebec Labour Relations Board certified the United Food and Commercial Workers of Canada to represent a Walmart Canada site on August 2, 2004.

Walmart locations in China have become unionized. Prior to 2004, Walmart China had issued statements asserting the futility of unions in its stores because of the openness of direct channels between management and workers. However, in late 2004, Walmart China granted employees the

right to unionize, and, facing threats from the government-backed All-China Federation of Trade Unions (ACFTU), on August 9, 2006, Walmart announced that labor unions in all sixty of its stores in China would be permitted without backlash to employees. Chinese unions differ significantly from those in the United States, as they traditionally work closely with management and rarely press for higher wages. Since officially allowing unions, Walmart China has openly cooperated with the ACFTU by attempting to jointly set up unions in each of its stores. In 2016, however, independent worker groups engaged in strikes at Walmart stores in China, seeking both better working conditions and a more independent union voice.

Sources: "Association for Walmart Emplo yees Provides Information, Services Clearinghouse," *Daily Labor Report*, November 6, 2005; "Jury Rules Walmart Must Pay $172 Million over Meal Breaks," *New York Times,* December 23, 2005; "Maryland OKs Walmart Health Care Bill," *CNNMoney*, January 13, 2006; "Missouri Court Certifies Large Class in Case Claiming Walmart Forced Off-the-Clock Work," *Daily Labor Report,* November 3, 2005; "Official Union Set Up in China at Walmart," *New York Times,* July 31, 2006.

eventually produce an even more adversarial form of collective bargaining and costly conflict.

We may now be witnessing some of the longer-term economic and social effects of union decline. Concerns over stagnant or declining real wages, increased wage inequality, and the stresses that long hours of work have inflicted on workers and their families are gaining national attention. Is union weakness part of the explanation for these trends? Recent studies have estimated that as much as 20 to 30 percent of the rise in income inequality since the 1980s can be attributed to the decline in unions and in the bargaining power of workers.[9]

Most of the debates over the consequences of union decline focus on economic issues. But unions are also an important institution in a democratic society. The absence of a strong voice for workers in community or national affairs leaves a void that diminishes the quality of political discourse and narrows the range of options that are seriously considered in debates on critical economic and social policy issues.

Costs to Workers of Adjusting to Economic Changes

Any future labor policy will have to address the fact that union membership is heavily concentrated in the oldest industries and among the workers who are most exposed to international competition. Those industries (e.g., steel, rubber, mining) will undoubtedly continue to reduce employment levels and move large numbers of workers across jobs and occupations. Employment adjustments will occur in these industries as a consequence of new labor-saving technology, the development of new products, the adoption of new business strategies, and the movement of jobs to lower-cost countries.

Many of the jobs being eliminated in older industries are high-wage jobs held by union members. Older workers displaced from these jobs are not well trained to fill any of the new high-skilled jobs being created. Older workers who have to accept low-wage jobs must endure a painful transition. Market forces alone may not fully smooth these adjustment processes.[10]

What Will the Comparative Advantage of the United States Be in World Trade: Low Wages or High Skills?

The events that followed deregulation of the airline and telecommunications industries suggest that deregulation may greatly reduce workers' power to fight management's efforts to minimize labor costs and oppose unionization. Workers in deregulated industries have experienced widespread pay cuts and have had to make concessions in work rules and reduced employment security. Companies in these industries have had difficulties sustaining innovations in labor-management relationships. Once product market competition increased after deregulation, management often found it easier to cut labor costs by creating new lower-cost nonunion organizations or by outsourcing work than to compete through managerial reforms and labor-management innovations.

If the government were to promote further deregulation, the minimization of labor costs might spread as a business strategy. However, in the long run, minimizing labor costs may be self-defeating because U.S. firms that compete on the basis of labor costs may not fare well in world trade. The problem is that workers in transitioning countries receive very low wages and U.S. firms may be unable (or unwilling) to keep wages low enough to compete through low costs with firms in transitioning countries.

U.S. firms might be more successful if they pursued the comparative advantages that can derived from high technology, commitment skilled and loyal work force, and product innovativeness. Few dispute the proposition that the comparative advantage of the U.S. economy lies in its high-technology, high-quality products and its ability to adapt rapidly. This type of economy requires skilled employees who are strongly committed to their employers. Although reducing labor costs may help save some jobs in the short term, in the long term, both the U.S. economy and the interests of workers might be better served if employers were to invest in the quality of their human resources. However, it does not appear that market forces alone will be enough to push employers to pursue a high-skills human resource strategy.

All the reasons discussed in this section suggest that it is necessary to supplement the market with labor policies. But what should the policies be? There is much debate about this issue. Below we outline two alternative strategies.

Strategy 2: Modest Reforms in the Current Collective Bargaining System

A second alternative for future labor policy is to actively support the types of modest reforms of traditional collective bargaining and labor law that the Dunlop

Commission recommended. This would require, among other things, minor reforms of the NLRA and the NLRB. Such reforms would make it more difficult for employers to oppose union-organizing efforts and make it easier for unions to achieve first contracts after they win a representation election. Restrictions on employee participation in nonunion settings might be relaxed. Alternative dispute resolution procedures might be encouraged to help reduce the backlogs in adjudication when employment laws are violated and to provide access to speedy and equitable enforcement of these laws. The Employee Free Choice bill used this approach in 2009. It would have increased penalties to employers for violating workers' rights during organizing campaigns, provided for union recognition if a majority of workers in a bargaining unit signed union authorization cards, and provided for arbitration of first contracts if a voluntary agreement could not be reached. There also have been discussions in Congress from time to time about packaging this bill with Republican-backed bills that would loosen constraints on various forms of employee participation for nonunion employees. Neither of these approaches, however, have gained enough support to get through Congress or overcome a threatened veto by a president.

There is no reason to believe that this policy approach would be any more acceptable or successful today or in the future than it has been in the past. In addition, it may not be flexible enough to address the full range of employment settings in today's economy. It may therefore be time to propose a broader and more comprehensive approach to labor and employment policy, one that opens new avenues for employee representation and participation in decision making.

Strategy 3: A New Labor Relations System

We believe it is time to open labor law and related employment policies to a period of active experimentation and learning that over time would both support a high productivity, high wage economic strategy for the country and extend labor law protections to workers who are currently excluded from federal labor policies. Innovations in labor relations along these lines could produce valuable improvements in productivity and living standards while also providing equitable due process. However, the new features we propose below are not substitutes for improving basic labor laws to provide easier access to union representation for those who want it.

The broad set of policy changes we propose would support and extend the innovations in employee participation in workplace committees and labor-management partnerships that companies and unions have introduced in recent years. Another goal is to open the law to support further experimentation with the various forms of voice that are emerging among those who work outside standard employment relationships such as independent contractors.

Within companies this new type of labor relations would encourage and support the features listed in Box 16.4. At the workplace level, it would encourage employee participation in workplace decisions, flexibility in the organization of

work, and extensive informal communication between labor and management. The goal would be to avoid the low trust–high conflict cycle often found in traditional collective bargaining relationships. Another major goal of the new system would be to increase flexibility at the workplace by moving away from detailed work rules and narrow job descriptions and facilitating employee input into decisions and due process.

The functional level of the new labor relations system would encourage profit-sharing or productivity gains-sharing and employee stock ownership arrangements. The parties must be careful, however, not to let the move to these "contingent" compensation procedures erode workers' standards of living. The goal here would be to make wages responsive to current economic conditions and to give employees an economic stake in their enterprise. Employee training and career development

BOX 16.4
Core Components of a New Labor Relations System

Strategic Level

Workers and unions should have access to more information about the state of the business and management's plans for the future

Workers and union representatives should participate in the development of management strategies and business plans

Labor and human resource executives should be better informed about and consulted in actions of other groups (e.g., technology and product development, finance, and operation and other management specialists)

Functional Level

Part of compensation should be contingent on group or organizational performance

Greater priority should be given to promoting employment security.

Training and development opportunities should be available to all workers

Workplace Level

Employees should have the opportunity to participate in workplace improvement groups or committees

Rigid work rules should be replaced with more flexible work systems

Grievance procedures should be supplemented with more options for resolving problems through better communication, problem solving, and other means of ensuring due process

also would be encouraged. Strengthening employment security programs and income security programs could contribute toward this end.

At the strategic level of the new system there would be a break with the principle that it is management's job to manage the enterprise and the union's job to negotiate over the effects of management actions. Instead, the new system would encourage information sharing and consultation between management and worker representatives. No single form of worker involvement at the strategic level is anticipated, in keeping with the variety of mechanisms already being developed by labor and management. However, the policy would promote use of consultative bodies made up of union and nonunion employees and employee representation on boards of directors.

Legal constraints on the ability of employees, supervisors, and middle managers to participate in decision making should be removed, regardless of whether a union is present or not. As long as employees have the freedom to decide whether to be represented by a union, employee participation should be deregulated and allowed to take whatever form best suits the problems and circumstances of the parties involved. The current law that denies supervisors bargaining rights is outmoded, for example. So too are efforts to draw a clear line of demarcation between managers who are exempt from eligibility for overtime and employees who are paid for the overtime hours they work. These restrictions conflict with the contemporary decentralization of managerial decision making. Without reform of labor and employment laws, first-line supervisors and middle managers are in an untenable predicament. On the one hand, changes in technology and in personnel policies of many organizations have reduced the power and status of supervisors and given rank-and-file employees more influence. On the other hand, supervisors are not protected by labor law if they engage in collective efforts to improve their employment conditions.

Given their precarious position, it is not surprising that supervisors so often find ways to block workplace innovations. This resistance to change is likely to continue unless supervisors are involved more meaningfully in processes to change and improve companies.

Likewise, constraints on the **mandatory** and **permissible scope of bargaining** no longer make sense. Strategic business decisions have serious consequences for employment and for the income security of workers. Effective employee representation, therefore, requires employee participation in strategic business decisions at an early stage of the process.

These reforms would do more than just improve labor relations. Elected employee representatives would bring another independent voice to corporate governance and a new transparency to human resource practices and policy formation. This would have positive effects on issues ranging from executive compensation to organizational design.

In the new system, the exclusivity unions have as worker representatives would be modified. Employee-management councils, similar to works councils in Europe that provide representation to a cross-section of blue- and white-collar workers, would be allowed. The parties would be encouraged to create consultative

procedures involving employees from a variety of occupations. These procedures could supplement formal negotiations for employee groups that choose to be represented by a union for the purposes of collective bargaining.

In addition, unions, professional associations, and other organizations would be encouraged to develop a broad range of labor market services for individuals not covered by formal collective bargaining and those who work as independent contractors. Information about a variety of topics, including the labor market, training and education, pensions, health insurance, supplemental unemployment insurance, and legal representation and advice about occupational safety and health could be provided by full service unions or by alternative forms of collective representation. The objective here would be to create the incentives and opportunities for a variety of new labor market organizations and institutions to meet the changing needs of workers and their evolving employment relationships. These labor market institutions would lower the cost of mobility to workers who have to find new jobs in the wake of corporate failures, restructuring, or layoffs. By building this type of institutional infrastructure, labor market policies could then move in the long run to delink benefits from individual companies by making pensions, health insurance, and other leave benefits portable.

These broader reforms are necessary to catch up with changes in how work is done, particularly types of work arrangements that the National Labor Relations Act did not anticipate. That law was passed to regulate an employment relationship in which employees were managed by a single and easily identifiable employer. Today, a significant and growing number of work settings do not fit this model. A recent survey suggested, for example, that approximately 15 percent of the work force is employed in some form of contract, franchise, or independent contractor work arrangement.[11] Most of those employed in these settings are currently either excluded from coverage under the NLRA or have difficulty determining exactly who their employer is if they wish to form a union and negotiate a contract. Any future efforts to update labor law will need to find ways to extend access to some form of voice and representation to these workers.

This new system would build on the work practices being used in various union and nonunion settings. It incorporates reform ideas that have been advocated in recent years.

Beyond Labor Law: The Need to Integrate Labor, Economic, and Social Policies

Implementing and diffusing a new labor relations system will require the active support of federal and state policy makers and significant shifts in the strategies of management and labor. Below we outline the steps the government, labor, and management could take to better integrate labor policy with other employment policies and with a high productivity, high wage economic strategy.

Changes in Government Policies

The diffusion of the new labor relations system should be accompanied by changes in federal economic and social policies. An extensive employment and

training policy, for example, is needed to assist workers who are transitioning across employers or occupations. The unemployment compensation system should be altered to cover a higher percentage of the unemployed and encourage unemployed workers to acquire new skills. Given the decline in defined benefit pensions that has taken place since the 1990s, increases in social security retirement benefits or some other retirement savings program are needed. Other employment regulations such as noncompete agreements that some states enforce (and others prohibit) should be modified to reduce the costs to workers when they change jobs. Distinctions in the employment rights of employees, independent contractors, and consultants need to be reexamined to see if they still make sense. Anyone who works should be entitled to the basic protections provided by labor and employment laws, regardless of whether they are labeled employees, independent contractors, or temporary workers.

Macroeconomic policies should promote economic expansion and growth in productivity. One way to do so would be to increase investment in repairing the nation's aging infrastructure, an action that business, labor, and a wide range of economists and engineers all see as much needed and long overdue. Support for basic education and research should be increased in the United States in light of the support given to such activities by our economic competitors.

Given the increased interdependence between work and family life that comes with the rise in labor force participation of women and the fact that parents receiving Aid to Families with Dependent Children must now work as a condition of receiving financial assistance, issues of family and medical leave take on increased importance. The United States is the only advanced industrial economy and the only democracy that does not offer some form of paid leave for workers who need to attend to family needs. There is much debate over the future of the Family and Medical Leave Act. Employers find it too inflexible, too cumbersome to administer, and too difficult to integrate with leave policies of individual employers. Family advocates criticize the act for covering only about 55 percent of the labor force (companies with 50 or fewer employees are excluded) and for providing only *unpaid* leave.

One option for addressing both of these concerns is to establish minimum and flexible standards for paid leave that apply to more employees and are linked to existing leave policies offered by employers. Many companies do this already, especially in unionized settings where the parties have negotiated leave policies suited specifically to the needs of their particular work force and business settings. As discussed in previous chapters, a number of unions and companies have established jointly funded and jointly managed programs to support child care, elder care, and related family services. These are all ways to address the changing demographic profile and the increased interdependence of work and family that characterizes today's labor markets. Given these labor force changes, these issues will likely be front and center in any future debates over how to modernize American labor and employment law to catch up with the changing work force and the changing nature of work.

State and Local Government Policies

The sustained impasse in labor policy at the national level has led to increased calls for action at the local and state government level. This is consistent with the history of innovation in social and labor policy in the United States. Most of what was introduced into federal law in the 1930s, such as unemployment insurance, workers' compensation, wage and hour protections, and even some aspects of collective bargaining law, were developed earlier and tested in states such as Wisconsin, New York, and Massachusetts.

Today we see a similar trend. The enactment of "living wage" ordinances in over fifty communities is one example. California enacted the first paid family leave act in 2004, followed by Massachusetts and New Jersey. Similar bills are being debated in many other states. Public sector labor relations statutes are another example of the important role state governments play in shaping labor relations for many workers across the country. Given the ongoing national stalemate over labor policy, we are likely to see an increase in efforts to enact changes at the state and local levels. These initiatives should serve as laboratories for experimentation and learning that can inform national policy debates at some point in the future.

Government policy alone, however, cannot spark changes in labor relations. The diffusion of a **new industrial relations system** requires the active support of management and labor.

Management Values and Strategies

U.S. managers will influence the diffusion of reforms in labor relations through their values and their business strategies. In a new labor relations system, management will have to accept a broad role for unions and workers in strategic decision making, yet opposition to unions is a deep-seated value of many U.S. managers. This is a significant barrier to the diffusion of a new system of labor relations.

The Role of Business Strategies

Not all business strategies are equally compatible with the labor relations reforms proposed above. Business competition based on low labor costs undermines the flexibility and adaptability of a company and the degree to which its workers trust management. However, because unions find it difficult to take wages out of competition, many firms are tempted to pursue a low-wage business strategy. The distrust that develops in firms that pursue low-wage strategies makes participatory practices impossible.

Business strategies that move work to different locations in response to variations in labor costs also are incompatible with a new system of labor relations. A low-cost production strategy can divert management's attention away from the need to develop other aspects of their business that would give them a competitive edge. Firms that focus on low-cost strategies tend to give too little attention to developing advantages based on technology, labor skills, and product innovation.

Other business strategies that limit worker trust also need to be avoided if industrial relations innovations are to take hold. When employers buy and sell

productive assets as short-run ways of raising capital without attending to the consequences of those actions for their work force, workers become less willing to trust that employer. Thus, corporate takeovers that meet only short-term corporate objectives have dysfunctional consequences for labor relations. The ability of employers to make such financial maneuvers should be limited by public policy; alternatively, employers who engage in such behavior should be required to provide compensation to the work force.

Technological Strategies

Technological strategies designed to give management maximum control and reduce the amount they pay workers lead to deskilled and unmotivated workers. Such strategies limit the opportunity for companies to learn from their employees about ways to improve operations.

A socio-technical approach to new technology is more consistent with the new labor relations practices we envision. Socio-technical policies use technology to decentralize decision making in companies and upgrade worker skills. Broadening job tasks and blurring traditional distinctions between white- and blue-collar work opens opportunities for workers to learn and apply new skills. The need to adopt technological innovations will intensify in the future as advances in artificial intelligence, machine learning, and robotics affect more jobs and a larger proportion of the work force. Greater worker input in the development and use of these technologies will help ensure that the work force obtains the skills needed to adapt to the way tasks will be changed, to share in the gains in productivity achieved, and to help those who are displaced by technological change to move to the new jobs that will be created.

Is it likely that a majority of U.S. managers will quickly adopt values and strategies that support the diffusion of a new labor relations system? If history is any guide, the answer is clearly no. Most managers are likely to prefer to stay with long-established practices or to adopt change incrementally. Yet with the increase in international and domestic competition, rapid changes in technology, and the interest many workers have in contributing to solutions to big problems in society, the need is growing for extensive changes in industrial relations. Economic pressures and pressures from governments and unions may eventually induce management to make major changes.

Broader Corporate Reforms

Confidence in American corporations and their top executives fell to historic low points in the wake of the scandals in the 1990s at companies such as Enron and WorldCom, and it has stayed at those low levels ever since. Restoring confidence in the business community has to be a high priority for the nation and its economy. This may well require giving employees more opportunities to monitor and contribute to corporate governance and managerial strategies and behaviors. This change will become even more critical if human capital and knowledge become increasingly important sources of competitive advantage in modern corporations, as many believe is already happening.

If employers are to gain value from the knowledge of their employees, they will need to rebuild their employees' trust. In turn, employees will need to understand the risks they are taking when they join or stay with a particular firm. Thus, the nature of employee participation and voice that will emerge out of this historic set of developments could have a profound effect on the future of labor relations.

Will the current debates over corporate reform lead to laws that give employees new rights related to participation and voice? This was the case in the 1930s, when the creation of the Securities and Exchange Commission, which protects those who invest in corporations, was followed by enactment of the NLRA, which protects workers. Whether history will repeat itself cannot be known at this time. If it does, we may witness more profound changes in American labor relations policy and practice than would be predicted by the past two decades of policy stalemate.

Union Strategies

Labor leaders face a similar choice about whether to support the diffusion of a new system of labor relations. At present, the leaders of the U.S. labor movement generally support worker participation and union-management partnerships but they have not developed an explicit strategy for promoting these initiatives. The reluctance of union leaders to strongly support participation in managerial decision making stems, in part, from leaders' fears that they will be co-opted. Union leaders worry that increased participation will lead them to support management's goals at the expense of promoting the interests of their members.

Union leaders will have to reassess their views and become more visible champions of the new labor relations practices we are proposing if they are to spread across the economy. Without the strong support of the labor movement, it will be difficult for management to take the risks associated with introducing new practices. Visible support from union leaders is also necessary to convince public policy officials, rank-and-file workers, and the public that a new labor relations system is possible. Union leaders' passive acceptance of new practices is unlikely to suffice.

If they do become more heavily involved in strategic business issues, union leaders will have to become more proficient at communicating with their members about their participation. Otherwise, members will remain suspicious of union leaders' new roles. In addition, union leaders will have to match their increased participation in business decisions with an increase in member participation in internal union affairs.

Why should labor leaders embrace a new labor relations system and adopt the new roles it requires of them? The answer to this question is quite simple: Union leaders have to do so if they are to represent the interests of their current members effectively and organize new members. Failure to do so will likely lead to further decline in union membership or at best perhaps a leveling off of members. If the labor movement continues to use its current strategies, union membership will

continue to decline and it will find itself relegated to marginal rather than a central role in economic and social affairs.

The scope of labor relations activity has broadened in recent years to involve more activities above and below the level of traditional collective bargaining. Strategic decisions made at the top of corporations and interactions at the workplace are now as important as the negotiations process. Union leaders, therefore, must acquire the ability to influence decisions made at the strategic and workplace levels as well as in collective bargaining negotiations. If they do not, their influence over the future of labor relations will continue to decline. But most important, unions, professional associations, and other organizations need to find ways of recruiting and representing the full range of participants in the modern labor force. These new approaches should not require participants to risk their jobs, engage in highly adversarial conflicts with employers, or depend on garnering a majority of their peers in a specific bargaining unit in order to gain the services, opportunities, and representation they need to succeed in today's labor markets.

To support labor mobility, unions will need to develop new capabilities and new structures. These are needed to satisfy workers' needs for lifelong learning and retraining, information about job opportunities, and continuous benefit coverage. Meeting these needs will require unions to recruit members and maintain their membership over the full course of their careers and modify union structures to allow workers to move across unions over their careers. In addition, craft and professional union models that support worker mobility may become increasingly important in the future since they are not tied to a specific workplace and may not be as dependent on exclusive representation and formal collective bargaining rights as industrial unions are. One might envision unions of the future as networks that provide a range of services and benefits.

Summary

This book began by presenting a **normative perspective** on work and employment relations and a broad framework for analyzing industrial relations. The text then explored how the strategic choices of the parties interact with environmental conditions to shape labor relations. It seems appropriate, therefore, that this final chapter poses the strategic choices now faced by labor, management, and governmental decision makers regarding the future of labor relations.

The field of labor (and industrial) relations has a heritage of close connections between research, teaching, public policy, and private practice. The fostering of this tradition would help the parties address the challenges they now face.

Discussion Questions

1. What are some of the key components of the current U.S. national labor policy?

2. Briefly outline the deregulation-market approach to national labor policy. Discuss some of the strengths and weaknesses of this approach.
3. Describe the key features of the new labor policy advocated by the authors.
4. How could the government encourage the diffusion of the new labor relations system we recommend if it chooses to do so?
5. What do you think are the most important issues that need to be dealt with through future labor policies?

Related Web Sites

Dunlop Commission:
http://digitalcommons.ilr.cornell.edu/dunlop/

Commission on Future of Worker Management:
http://are.berkeley.edu/~howardrr/pubs/lmd/html/fallwinter_94/commrep.html

U.S. Department of Labor:
http://www.dol.gov

Suggested Readings

Heckscher, Charles C. *The New Unionism*. Ithaca, N.Y.: ILR Press, 1996.

Kochan, Thomas A. *Restoring the American Dream: A Working Families Agenda for America*. Cambridge, Mass.: MIT Press, 2005.

Kochan, Thomas A., Harry C. Katz, and Robert B. McKersie. *The Transformation of American Industrial Relations*. Ithaca, N.Y.: ILR Press, 1994.

Osterman, Paul, Thomas A. Kochan, Richard M. Locke, and Michael J. Piore. *Working in America: A Blueprint for the New Labor Market*. Cambridge, Mass.: MIT Press, 2001.

Notes

1. For a good review of the various study groups that helped shape the National Labor Relations Act, see Christopher Tomlins, "The New Deal, Collective Bargaining and the Triumph of Industrial Pluralism," *Industrial and Labor Relations Review* 39, no. 1 (1985): 19–34.

2. Joel Cutcher-Gershenfeld, "The Emergence of Community Labor–Management Cooperatives," in *Industrial Democracy: Strategies for Community Revitalization*, ed. Warner Woodworth, Christopher Meek, and William Foote Whyte (Beverly Hills, Calif.: Sage, 1985), 99–120.

3. John Thomas Dunlop, *Fact Finding Report, Commission on the Future of Worker Management Relations* (Washington, D.C.: U.S. Departments of Commerce and Labor, 1994), xi.

4. Ibid.; U.S. Commission on the Future of Worker-Management Relations, *Report and Recommendations* (Washington, D.C.: U.S. Department of Labor, 1994).

5. For a discussion of the difficulties involved in getting national leaders to consider labor and employment policy issues, see Robert B. Reich, *Locked in the Cabinet* (New York: Simon and Schuster, 1997).

6. John T. Dunlop, "The Limits of Legal Compulsion," *Labor Law Journal* 27 (February 1976): 67.

7. Data on changes in the funding and administration of labor policies during the Reagan administration years are found in Sar A. Levitan, Peter E. Carlson, and Isaac Shapiro, *Protecting*

American Workers: An Assessment of Government Programs (Washington, D.C.: Bureau of National Affairs, 1986).

8. For a discussion of the decline of the steel industry, see Robert W. Crandall, *The U.S. Steel Industry in Recurrent Crisis* (Washington, D.C.: Brookings Institution, 1981). For a historical analysis of labor relations in the steel industry through the mid-1980s, see John Hoerr, *And the Wolf Finally Came* (New York: Praeger, 1987).

9. Bruce Western and Jake Rosenfeld, "Unions, Norms, and the Rise in U.S. Wage Inequality," *American Sociological Review* 76, no. 4 (2011): 513–537.

10. Paul Osterman, *Employment Futures* (New York: Oxford University Press, 1988).

11. Alan Krueger and Lawrence Katz, "The Rise and Nature of Alternative Work Arrangements in the United States, 1995–2015," Princeton University and NBER working paper, March 29, 2016.

Glossary

ability to pay Management's financial ability to meet union demands. Determined by company earnings and assets

absolute union wage effect A measure of how much union workers earn above what they would earn if there were no unions

affirmative action programs Programs aimed at remedying discrimination by giving members of categories of workers who have been discriminated against preference over others in hiring or promotion

AFL-CIO A federation of national labor unions formed through the merger of the American Federation of Labor and the Congress of Industrial Organizations in 1955, with the goal of promoting the political objectives of the labor movement and providing assistance to member unions in their collective bargaining activities

AFL-CIO Organizing Institute An institute created by the AFL-CIO in 1989 to recruit and train new organizers. It also provides affiliated unions with strategic planning and analysis related to organizing campaigns

Age Discrimination in Employment Act (1967) Federal legislation that prohibits discrimination in employment against workers over the age of 40

Aid to Families with Dependent Children (AFDC) A welfare program aimed at helping low-income families with children by providing income and housing assistance

American Arbitration Association (AAA) A private nonprofit organization that facilitates the arbitration process by maintaining lists of arbitrators and making facilities available for arbitration hearings

American Federation of Labor (AFL) A federation of national labor unions founded by Samuel Gompers in 1886 with the goal of organizing craft workers into exclusive unions to achieve improved wages and working conditions and to protect the status of the trades through collective bargaining

Americans with Disabilities Act (1990) Federal legislation that prohibits discrimination in employment based on disabilities

annual improvement factor Annual wage increases in addition to cost-of-living increases in collective bargaining contracts; usually equal to 3 percent per year. Used in the auto and other industries

antitrust legislation Laws designed to curtail the power of trusts and monopolies. These laws were used against unions in the early part of the twentieth century

apprenticeship training system A formal system of training and certification to obtain skilled workers

arbitration A procedure for settling impasses in which a third party (the arbitrator) makes a binding decision

arbitration hearing A stage of the arbitration procedure when both parties present their positions and the evidence to support their cases, usually initiated with opening statements by union and management representatives

arbitrator's decision The ruling of an arbitrator, given orally or in written form. If written, the decision typically includes a summary of the issues, facts, and claims the parties have presented and the arbitrator's resolution of the grievance

attitudinal structuring The process through which labor and management develop more trust in one another

authorization cards Cards signed by unorganized employees declaring their interest in unionization. Before the NLRB can schedule an election, a minimum of 30 percent of the election unit must sign authorization cards

bargaining in good faith A characteristic of collective bargaining that the National Labor Relations Act requires of labor and management. This has been interpreted to occur when the employer and the representative of the employees meet at reasonable times and exhibit give and take

bargaining outcomes The results of the negotiations process (the rights and obligations of management and labor) that are codified in the collective bargaining agreement

bargaining power The ability of management or labor to achieve its goals. The parties are affected by the total bargaining power of labor and management in a particular situation and the respective relative bargaining power of each party

bargaining power model of strikes A model that views strikes as a product of the militancy of the union and the work force. During periods when the economy is weak, the union is expected to be more militant and thereby less likely to resort to a strike

bargaining structure The scope of employees and employers covered or affected by the terms of a collective bargaining agreement. Pertains to formal and informal structures and centralized and decentralized structures

bargaining unit The workers or jobs formally covered by a collective bargaining agreement

behavioral model of strikes A model that views strikes as determined by the extent to which workers are integrated into society

Boulwarism A hard-line management strategy for regaining the initiative in bargaining that General Electric used in the 1950s. Using this strategy, management polled workers to determine their interests and then made a single final offer in negotiations that reflected the financial condition of the firm and the results of the workers' surveys

broad bargaining unit A bargaining unit that includes multiple types of employees. The broadest unit is an industrial unit that includes all the unionized employees in a plant (both skilled and unskilled)

bureaucratic pattern A nonunion industrial relations pattern characterized by highly formalized procedures, detailed job classifications, and job evaluation schemes

business agent An individual who operates as the chief administrative officer of a local union by directing local contract negotiations and handling grievances

business cycle Fluctuations in national output and unemployment. The U.S. economy historically has experienced large fluctuations in gross national product, although these fluctuations (i.e., business cycles) are usually short

business necessity A defense of employment discrimination in which the employer can prove that a policy or a practice that unintentionally operates to disadvantage a group of employees defined by grounds prohibited by Title VII of the Civil Rights Act of 1964 (i.e., race, sex, religion, etc.) is justified as a reasonable requirement of a job

business strategies High-level management decisions that involve matters such as investments, the sourcing of supplies, and production strategies

business unionism The philosophy of the AFL and the dominant philosophy of U.S. trade unions that argues that unions must focus on practical objectives, such as improvements in wages and employment conditions, and eschew activities designed to bring about broad political change

captive audience speech A speech during a management-led meeting on company time and at company facilities during a representation election campaign designed to dissuade employees from voting for the union

centralized bargaining structure Bargaining that covers all the plants of a company and sometimes all the companies in an industry with the same collective bargaining agreement

Change to Win A rival federation to the AFL-CIO that was created in 2006 by seven unions who wanted a more aggressive focus on union organizing. Since then, three of these unions have rejoined the AFL-CIO

chilling effect What happens when labor and management do not make compromises that they might otherwise be willing to make because they believe that a fact finder or an arbitrator will split the difference between their final positions

Civil Rights Act of 1991 An amendment to Title VII of the Civil Rights Act of 1964 that strengthened protections against discrimination, including allowing employees who have been discriminated against to pursue litigation and allowing juries to assign monetary awards for pain and suffering

Clayton Act (1914) Federal legislation that declared that human labor is not an article of commerce

clinical approach An approach to arbitration used by arbitrators or the courts that focuses on mediating disputes, uses informal procedures, and gives arbitrators discretion as they help the parties develop a working relationship

closed shop A place of employment in which individuals must be a member of the union in order to be eligible for hire into the bargaining unit. This is established through a clause in a collective bargaining contract

coalition bargaining Bargaining that occurs when the unions that represent different groups of employees in a company coordinate their bargaining with that company

codetermination Employee representation on boards of directors and in works councils. This system is mandated by federal law in Germany

collective bargaining A mechanism by which organized groups of workers and their employers resolve conflicting interests and pursue agreement over common interests

collective bargaining agreement The results of labor-management negotiations as they are codified in written form

common law Legal rules developed by judges in court decisions rather than through laws enacted by state legislatures or by Congress

Commonwealth v. Hunt (1842) A landmark case in which the Massachusetts Supreme Court departed from the criminal conspiracy doctrine by ruling that unions had a right to exist, although it prohibited them from using coercive pressures to achieve their goals

competitive menace A term John Commons coined to refer to the competition employees face in an industrializing economy, such as child labor, prison labor, and immigrant labor. Commons argued that workers formed unions in the nineteenth century to counteract the effects of competitive menaces

compulsory arbitration A dispute resolution procedure in which both parties are required to adhere to the settlement imposed by an arbitrator if they are unable to reach a negotiated settlement on their own

concessionary bargaining The negotiation of pay freezes, pay cuts, rollbacks, or work rule changes that occurred frequently in the 1980s

conflict pattern An unstable industrial relations union pattern in which labor and management are engaged in a struggle over basic rights

Congress of Industrial Organizations (CIO) A federation of national labor unions formed in 1938 with the goal of promoting industrial unionism

constitutional law A body of law that focuses on issues such as election processes, the powers granted to different parts of the government, and the rights of individual citizens. For labor relations, this may cover issues such as which branch or level (in federal systems) of government has the power to regulate labor relations and the rights of individual workers, especially public sector employees, in relation to the government

constitutive function of labor law Aspects of labor law that deal with regulating the process of union formation and the establishment of collective negotiations

consultation Informal meetings between labor and management to settle disputes

contract administration The day-to-day implementation and application of the labor contract. The processing of grievances is a central activity of contract administration

contract ratification A vote by union members to reject or approve the settlement of a negotiated contract

contract zone The potential contract settlements created by the overlap between what management and labor are willing to accept during negotiations

conventional arbitration A dispute resolution procedure in which the arbitrator is free to fashion any award he or she deems appropriate

Cordwainers' case (Commonwealth v. Pullis, 1806) A landmark case in which the Philadelphia mayor's court ruled that efforts by unions or other combinations of workers to raise wages were illegal and that unions were "criminal conspiracies."

corporate campaigns An aggressive tactic unions use to increase the probability of organizing new workers by pressuring management using public, financial, and political means

corporate restructuring Management's development of new work structures that are geared toward achieving greater flexibility in the deployment of a work force

corrective discipline Penalties that increase incrementally in severity to give employees the opportunity to reform their behavior; usually a part of progressive discipline

cost-of-living adjustment Increases in the earnings of workers based on increases in inflation

covenant of good faith and fair dealing An exception to the employment-at-will rule that is recognized in a few states. Such a covenant makes dismissals illegal when they violate an implied principle of the employment contract that the employer will not unfairly or deceptively deprive the employee of the benefits of the contract, such as a dismissal to prevent the employee from collecting a bonus due to be collected for work successfully performed

craft unions Unions that are organized on the basis of a skill or trade

criminal conspiracy doctrine A view of early nineteenth-century U.S. courts that labor unions were illegal

Danbury Hatters' case (Loewe v. Lawlor, 1908) A landmark case in which the U.S. Supreme Court ruled that the Sherman Antitrust Act applied to unions

Davis-Bacon procedures Procedures that pay workers on government-funded projects wages equal to those prevailing in union contracts in the area

decentralized bargaining structure Bargaining that involves a single plant or only a few plants in a firm

decertification election A vote by employees in a bargaining unit to determine whether they desire to maintain their existing union representation

Declaration on Fundamental Principles and Rights at Work (ILO) The first three of these fundamental rights focus on substantive terms and conditions of employment. The fourth, which asserts the right of workers to freedom of association, requires attention to labor-management interactions. These are universal principles that all countries, regardless of their level of economic development, are expected to meet with regard to the content of their labor relations policies and the enforcement of their policies

deindustrialization The loss of manufacturing jobs and the industrial base of the U.S. economy

demand for labor The number of workers needed to produce goods and services at the volume employers desire

democratization The spread of political democracy in countries that were previously totalitarian or governed by dictators

demographic context The traits of workers that influence collective bargaining, such as the racial and sexual composition and educational attainment of the work force

dependent variable The outcome caused (explained) by other factors

deregulation The elimination or severe weakening of federal laws that regulate economic activity

deskilling The lowering of the skills required in jobs

discipline The punishment given to an employee for not abiding by a company's rules

disparate impact Illegal discrimination in employment whereby a policy or practice that is neutral on its face has a negative impact on some group of employees defined by race, sex, religion, or other grounds prohibited by Title VII of the Civil Rights Act of 1964

disparate treatment Illegal discrimination in employment where an employee is intentionally treated differently because of his or her race, sex, religion, or other grounds prohibited by Title VII of the Civil Rights Act of 1964

dispute resolution The process by which labor and management settle their differences (i.e., arbitration, fact finding, or mediation)

distribution of income The degree to which income is distributed equally in a country

distributive bargaining A win-lose bargaining process in which one side's gains are the other side's losses; also called zero-sum gain bargaining

downsizing Plant shutdowns, worldwide consolidation, and technological updating of manufacturing facilities. Typically results in a loss of jobs

drive system A workplace in which a supervisor has extensive control over the work force regarding matters such as discipline, hiring, firing, and pay rates

dual image of trade unions A view of trade unions that sees them as politically powerful yet acknowledges social benefits of their collective bargaining activities

due process Procedures that give employees the opportunity to redress managerial policies with which they disagree

Dunlop Commission on the Future of Worker-Management Relations A commission created during the Clinton administration that was tasked with making recommendations about changes in the practice of industrial relations in the areas of labor-management cooperation, employee participation, and workplace governance. The hope was that the commission's recommendations would lead to changes in labor laws and regulations and would stimulate a better and more efficient working environment in the United States

duty of fair representation The responsibility of unions to represent all members of the bargaining unit fairly and impartially

economic context The economic factors of the external environment that influence the bargaining process and bargaining outcomes such as the unemployment rate, the growth in the economy, and the rate of inflation

elasticity of demand The degree to which the demand for a good or input changes when its price changes

election unit The group of employees that the National Labor Relations Board determines is eligible to vote in a union representation election

Employee Retirement Income Security Act (ERISA) Federal legislation passed in 1974 that specifies minimum standards for pensions regarding matters such as funding, vesting, and the disclosure of information

employer federation A group of employers who join together to pursue their mutual interests. These federations typically provide member firms with advice and engage in political lobbying

employment at will A doctrine stipulating that employers are free to discharge employees without liability and due process, provided that the termination does not violate any laws or the U.S. Constitution

enterprise union A union whose membership includes both blue- and white-collar workers from only one company. Most Japanese unions are structured in this fashion

equal employment opportunity Programs aimed at ensuring that equal wages are paid for equal work and that hiring and promotion decisions that are made without concern for an individual's race, sex, creed, or religion

escape A union avoidance strategy by management. Escape consists of finding or threatening to find a nonunion alternative location or a nonunion work force to do the work that was previously done under a union contract

European Union An economic body that consists of representatives of twenty-eight European nations as of 2017. EU members enjoy the absence of trade restrictions and tariffs in their trade with each other. The EU also sets policies regarding employment practices, products, and taxes for its member countries, who use a common currency

exclusive jurisdiction The right to have only one union represent a designated group of workers

Executive Order 10988 An order President John F. Kennedy signed in 1962 that extended collective bargaining rights to federal government employees

exempt employees Employees who are not subject to the wage and hours provisions of the Fair Labor Standards Act, most commonly managers and professionals. Exempt employees are not entitled to overtime pay

expedited arbitration A type of grievance arbitration procedure in which the parties agree to speed the process of resolving disputes by bypassing some of the steps in the normal grievance procedure and adhering to tight time limits

external environment The key elements (the economy, law and public policy, demography, social attitudes, and technology) that constitute the broader context for

collective bargaining and strongly influence the bargaining process and bargaining outcomes

facilitator An individual who seeks to create compromises in disputes between quarreling parties

fact finding The process through which a neutral party analyzes and then conveys the facts of a labor-management dispute. Used frequently in the public sector, but rarely employed in the private sector

Federal Mediation and Conciliation Service (FMCS) A federal agency that provides mediation services

final-offer arbitration A form of binding interest arbitration in which the arbitrator must select the final offer of either the union or management as the settlement

formal bargaining structure The bargaining unit (employees and employers) that is bound by the terms of a collective bargaining agreement

fractional bargaining The extension of bargaining down to the level of the work group and the shop floor, where supervisors and workers often negotiate unwritten agreements or ignore certain provisions of the contract

free collective bargaining The negotiation and enforcement of labor agreements by the parties who are directly affected by those agreements with minimal government intervention

fringe benefit Compensation that supplements wages, such as a pension or health insurance

functional level The middle tier of industrial relations activity that involves the negotiation and administration of a collective bargaining agreement

global union federation An association of unions in several countries that have become prominent because they promote union networks at a shared multinational employer. These unions come together to create a transnational union structure with the goal of sharing information, coordinating activity, and bargaining with an employer on a transnational level

global supply chains The range of companies that supply component parts of final products to a multinational company, which sells the product(s) under its name

government Local, state, and federal agencies that make and implement laws and regulations

grievance A complaint by an employee (or a union) that management is inaccurately or unfairly implementing the labor contract

grievance arbitration The final step in most grievance procedures in which a neutral third party is selected to resolve the dispute

grievance mediation A type of mediation in which a third party is selected to function as both mediator and arbitrator with the goal of mediating settlements of grievances, thereby reducing the frequency of arbitrations

Haymarket affair An outburst of violence that occurred in Chicago in 1886 after a lockout of workers at the McCormick Harvester Works plant. Many historians believe that the police precipitated much of the violence on otherwise peaceful protestors

Hicks model of strikes A model developed by John R. Hicks that argues that strikes occur as a result of miscalculations by labor and/or management

Homestead strike A strike in 1892 involving the Carnegie Steel Company and the Amalgamated Association of Iron, Steel, and Tin Workers that turned violent when striking workers tried to prevent replacement workers from entering the facility and fought with private security guards

hostile environment Illegal harassment of a sexual nature in the workplace that is so severe and pervasive that it changes the terms and conditions of employment, even if the harassment does not constitute threats relating to preserving or receiving job benefits

human relations movement A school of thought in the 1920s and 1930s that maintained that worker satisfaction would result in higher productivity and emphasized the social significance of work and work groups

human resource management pattern A nonunion industrial relations pattern that focuses on career development and includes practices such as team forms of work organization, skill-based pay, and elaborate communication and complaint procedures

hybridization Corporate forms and practices that are blends of those of the country in which the multinational corporation (MNC) is operating and those of the home country of the MNC

impasse The point in negotiations where no compromise appears achievable and a strike or lockout is imminent

impasse resolution Efforts including arbitration, fact finding, and mediation that are used to resolve a dispute between labor and management

implied contract A contract that a court rules is implied between an individual nonunion employee and an employer based on the statements or conduct of the parties

implied obligations doctrine The view that while management may have a property right to allocate the resources needed for the proper functioning of the company, workers should have due process rights. This argument has been used by critics of employment at will

income security Programs that provide income support to laid-off workers through a collective bargaining agreement

indentured servitude An employment arrangement that prevailed in the colonial period through which individuals gained passage to the colonies in exchange for their services for a specified number of years

independent variable The manipulated or control variables that explain why a particular outcome occurred (i.e., the variables that cause an outcome)

industrial relations A broad interdisciplinary field of study that encompasses all aspects of the employment relationship

industrial unions Unions that represent workers across different skill levels

Industrial Workers of the World (IWW) A union that was active in the early twentieth century that supported direct action to improve working conditions and

the creation of an independent political party to work for the overthrow of capitalism and the establishment of a cooperative commonwealth

industrialization The process of technological change and industrial development that leads to economic expansion and modernization

inelastic A near-absence of change in the demand for or supply of labor even when the price of labor changes

informal bargaining structure The employees or employers who are affected by the results of a collective bargaining agreement, even though they are not a direct party to the agreement

informal sector The part of an economy that is not regulated by the government, is not taxed, and is not included in estimates of the gross national product (GNP) of a country

institutional economists Individuals who reject the view that labor can be viewed and analyzed as a commodity. These economists study the role that history, politics, and conflict play in shaping employment conditions

integrative bargaining A win-win bargaining process in which solutions to problems bring gains to both labor and management

interest arbitration A process by which the decision of a third party who is called upon after labor and management have reached an impasse is binding on both parties. Interest arbitration is rarely used in the private sector but is used extensively in the public sector

interest-based bargaining A form of integrative bargaining whereby labor and management jointly frame and solve issues to reach solutions that bring gains to both sides

international framework agreement (IFA) Multilateral agreements signed at a global level between a corporation and a union, usually one of the global union federations, in order to ensure equal standards across a firm

International Labour Organization (ILO) convention An internationally accepted principle designed to guide the development of labor laws of ILO member nations. The two central conventions for labor relations and collective bargaining are Convention 87, on Freedom of Association and the Right to Organize, and Convention 98, on the Right to Organize and Collective Bargaining. Before an ILO convention can come into force, it must be ratified by the individual member nations

international trade secretariat An autonomous agency that provides information to member unions and coordinates union activities across national borders

intraorganizational bargaining Bargaining over differing interests within a union and/or management

job classification A description of the skills needed for and responsibilities of a job as formally stated in a contract or personnel manual

job control unionism Unionism characterized by detailed and complex contracts that outline the rights and job obligations of workers

job security A clause in collective bargaining agreements that provides employment or income protection to workers affected by layoffs or plant closings

joint steering committee A committee of representatives of employees and the employer that seeks to coordinate employee and participation in work restructuring and collective bargaining activities

NLRA v. Jones & Laughlin (1937) A landmark U.S. Supreme Court case in which the justices ruled that the National Labor Relations Act was constitutional

judicial approach A formal and legalistic style of arbitration in which the arbitrator acts like a judge rather than like a mediator

judicial deference to arbitration The view established in the Steelworkers' trilogy cases that the courts would review arbitrable disputes only in exceptional circumstances

just cause Legitimate reasons to take actions. In the context of labor relations, whether management acted appropriately and fairly when disciplining an employee

Knights of Labor One of the most important national labor movements in the late-nineteenth-century United States. It organized workers on a city-by-city basis across crafts in the period 1860 to 1890 using the philosophy that all workers had common interests regardless of skill or occupation

knowledge-based pay A step-increase form of compensation in which workers receive additional pay based on the number of different jobs (or skills) they are proficient at in the work area. Workers are paid their skill rate each day regardless of whether they are actually assigned to a job that requires them to use all of their skills

labor Employees and the unions that represent them

labor law reform Congressional legislation that seeks to change laws related to union organizing and other labor relations matters

labor-management committee A group of workers (and possibly union representatives) who meet with management in an attempt to resolve problems and improve company performance outside formal collective bargaining

labor-management cooperation Efforts by labor and management to jointly solve problems (i.e., pursue integrative bargaining). Often involves work restructuring and employee and union participation in work restructuring and business decisions

labor-management dialogue An effort to open communication channels between management and labor to solve mutual problems

Labor–Management Relations Act *See* Taft-Hartley Act

Labor–Management Reporting and Disclosure Act (Landrum-Griffin Act, 1959) Amendments to the National Labor Relations Act that requires unions to report and disclose information about their finances, specifies the rights of individual union members, and imposes a duty on union leaders to represent their members' interests in a fair manner

labor relations staff The management personnel who are responsible for handling organizing attempts, negotiations, contract administration, and litigation with regard to union activity

laboratory conditions A situation where workers are free to judge whether they want union representation in an environment free of coercion and misinformation

laundry list A long list of proposals and inflated demands labor brings to the table at the start of negotiations

lifetime employment The practice common in Japanese firms of employing employees from the time they finish school until they reach retirement age

Lloyd-La Follette Act (1912) Federal legislation that gave postal employees the right to organize

local labor market The employment opportunities in a specific geographic area

local union A branch of a national union that is often confined to a specific plant or geographic area

lockout The initiative an employer takes to close operations (and lay off employees) after an impasse is reached in contract negotiations

locus of power The sources of power workers, a union, or managers have in society. Labor's power in national political affairs is an example

management The individuals responsible for promoting the goals of employers and their organizations. Encompasses owners and shareholders of a company, top executives, line managers, and industrial relations and human resource staff professionals

management by stress Japanese management techniques that pressure workers to work exceedingly fast and under the strain of continuous oversight by peers and by management

management rights Contractual language or understandings that give management the right to take certain actions unfettered by contractual restrictions

mandatory scope of bargaining Topics required in contractual negotiations, such as wages and other conditions of employment, as stipulated by the NLRA

Marshall's conditions Four factors that influence the elasticity of labor demand: the degree to which labor can be replaced by technology, the elasticity in demand for the final product, the elasticity of supply of nonlabor factors of production, and the share of labor costs in total costs

means-ends doctrine The doctrine that actions of unions were illegal only if they used illegal means, such as violence or criminal conduct, to achieve their ends or goals. Under this doctrine, union activities were not automatically considered illegal

mediation A voluntary form of intervention in labor-management disputes to help the parties reach a settlement. Mediators only make suggestions; their advice is not binding

mediation-arbitration A procedure for resolving impasses between labor and management in which a third party first tries to mediate a settlement and then acts as the arbitrator if mediation fails

miscalculation Labor contract negotiations in which either labor or management is excessively optimistic about the outcome of collective bargaining or a strike

modular production A form of team-based work systems that is replacing traditional individual jobs and the traditional incentive work system

Molly Maguires A militant society of Irish mine workers formed to aid miners who were striking in resistance to wage cuts

multilateral bargaining Collective bargaining in which many participants have some managerial responsibility and input into management's decisions. This form of bargaining is common in the public sector

multinational corporation A corporation that engages in economic activity in more than one country

multinational unions Unions whose jurisdiction or coordination span national boundaries

multiple interests An industrial relations perspective that recognizes the diversity of goals and conflicts among the parties involved in the employment relationship

mutual-gains bargaining *See* interest-based bargaining

narrow bargaining unit A bargaining unit that includes employees of only one occupation or skill type, such as a union that only represents police

National Academy of Arbitrators (NAA) A professional society of experienced arbitrators

national emergency dispute A strike or lockout that is the result of an impasse in negotiations in a major industry and that causes major disruptions to the national economy. The NLRA outlines special procedures for resolving such disputes

National Industrial Recovery Act (NIRA, 1933) Federal legislation that gave employees the right to organize into unions

National Labor Relations Act (NLRA, 1935) Federal legislation that became the basic law for collective bargaining and unions within the private sector of the United States. The act promotes the orderly and peaceful recognition of unions and the use of collective bargaining as a means for establishing the terms and conditions of employment

National Labor Relations Board (NLRB) A body that oversees issues related to union representation and elections, investigates charges of unfair labor practices, and issues remedial action when charges are upheld. The board's five members are appointed by the president and must be confirmed by the Senate

National Mediation Board (NMB) A board that conducts representation elections and mediates disputes that arise during negotiations covered by the Railway Labor Act. Authorized in 1934 by an amendment to that act

national union The national level of a union; the most powerful type of union body in the U.S. labor movement

negotiations process The efforts by labor and management to resolve conflicts, typically involving tactics, strategies, and counterstrategies, until a collective bargaining agreement is reached

neoliberal reforms Economic policies that include privatization of state-owned enterprises, deregulation, economic liberalization, free trade, open markets, and the reduction of the role of government in an economy

neutrality A situation in which the employer neither supports nor opposes the union's efforts to organize a plant or company

New Deal A series of government programs that began during the Franklin D. Roosevelt administration to bolster the purchasing power of consumers and to help workers survive economic hardships during the Great Depression

New Deal industrial relations system Labor relations activities characterized by managerial initiative and prerogatives at the strategic level, a central role for the grievance procedure at the middle level, and job control at the workplace level. These activities commonly include highly detailed and formal labor contracts, grievance arbitration, seniority rights, detailed job classifications, and standardized pay

new industrial relations system An industrial relations system that features employee participation in strategic and workplace decisions, flexibility in the organization of work, and extensive informal communication between labor and management

nongovernmental organizations (NGOs) Activist-driven organizations that provide expertise, conduct research, and monitor international agreements or violations of international law. NGOs are not for profit and are separate from any government entity

normative perspective A perspective based on ethics or morals

Norris-LaGuardia Act (1932) Federal legislation that outlawed yellow-dog contracts and strengthened the right of workers to form unions and barred federal courts from issuing injunctions against the labor movement during nonviolent strikes

North American Free Trade Agreement (NAFTA) An international agreement between the United States, Mexico, and Canada that removes tariffs and other trade barriers over a fifteen-year period for the purpose of stimulating trade. Took effect on January 1, 1994

Occupational Safety and Health Act (1970) Federal legislation requires employers to comply with safety and health standards. Administration of the act is in the hands of the U.S. Department of Labor

ombudsman An individual who is selected (typically by management) to mediate workplace complaints or conflicts as an alternative to the traditional grievance procedure

open-shop movement A movement that sought to discourage unionization through company-controlled unions and the expansion of pensions, welfare, and profit-sharing programs

organizational change Efforts to reshape relationships between workers and managers through building trust or through changes in work organization and job assignments

organizers Individuals who rally employee support in favor of union representation during an election campaign

organizing model A model of union representation that focuses a substantial share of a union's activity and resources on organizing through involving union members in the organizing process and in the internal operation of the union

outsourcing A process by which management contracts out work previously done by union members to nonunion workers in order to lower its labor and production costs

participatory pattern A union pattern of industrial relations characterized by contingent compensation systems, team forms of work organization, employment security programs, and direct participation by workers and unions in strategic and workplace decision making

part-time Less than a 40-hour work week

past practice Customary policies or methods. Arbitrators often give much weight to past practice in deciding grievances

paternalistic pattern of labor relations A nonunion industrial relations pattern in which managers administer personnel policies informally and with substantial discretion

pattern bargaining Bargaining in which parties not directly involved in the negotiations that reached a collective bargaining settlement follow those agreements in their own bargaining

performance appraisal A formal process that evaluates the productivity and contribution of an employee

permissible scope of bargaining Contractual issues that the parties may discuss but that are not mandatory subjects as stipulated by the NLRA

positional bargaining A traditional form of collective bargaining that emphasizes distributive issues. In positional bargaining, there are direct conflicts of interests; labor and management are adversaries and each side is attempting to win concessions at some expense to the other side

power broker function of labor law The aspects of labor law that deal with regulating and influencing the relative bargaining power of labor and management

Pregnancy Discrimination Act (1978) An amendment to Title VII of the Civil Rights Act of 1964 that states that discrimination based on pregnancy is a type of sex discrimination

prehearing briefs Statements presented to the arbitrator before an arbitration hearing in which the parties present their views of the issues, express their positions, and describe the evidence that supports their position

private sector Privately owned businesses

product market The marketplace in which final goods or services are sold

production standard Rules for or expectations about the pace of work, such as the speed of an assembly line

productivity The ratio of output to inputs in the production of goods and services

profit sharing Compensation awarded to employees based on the profits of the firm (a form of contingent compensation)

progressive discipline Penalties that increase in a stepwise fashion after repeated offenses by an employee, such as the issuance of an oral warning followed by suspension and then discharge

public policy exception An exception to the employment-at-will rule that makes dismissals illegal when the reason for firing the employee violates a strong public policy, such as when an employee is dismissed for refusing to commit a crime

public sector Government entities

Pullman strike An 1894 strike by the American Labor Union against wage cuts. Led by Eugene V. Debs. Federal troops were sent to enforce a court injunction against the striking workers on the grounds that they were impeding the delivery of mail and interstate commerce

quality circle (QC) A group of workers and their supervisors who meet for the purpose of solving production problems

quid pro quo In the context of labor relations, illegal sexual harassment in which an employer or supervisor makes sexual demands on an employee and threatens to rescind job benefits or even fire the employee if she or he does not comply with the demands

Railway Labor Act (1926) The first federal law to endorse the process of collective bargaining in the private sector. The act gave railway employees the right to organize and to bargain collectively. It was later amended to include airline employees

rank-and-file members The members of a union who are not in leadership positions

recognition strikes An organizing tactic of unions in the 1930s and earlier in which workers supporting the union go on strike until the employer agrees to recognize the union as their representative

red circle wage rates Wage rates that cannot be downgraded in the aftermath of technological change or other organizational restructuring

relative bargaining power The amount of power labor or management has in a particular situation in relation to the power held by the other side. Relative bargaining power is heavily influenced by strike leverage and the elasticity of demand for labor

relative union wage effect A comparison of the earnings of union and nonunion workers

representation election A vote by employees in an election unit to determine whether they want a union

representation gap The difference between the number of people currently represented by unions and the number of people who want representation

residual rights doctrine The view that unions should not have a right to infringe on the ability of management to act on the owners' behalf, except where management has agreed to share its authority on specific issues in specific language in a collective bargaining contract

right-to-work laws Laws that make it illegal to require employees to join unions as a condition of employment (i.e., a union shop is not allowed). The Taft-Hartley Act allows states to pass such a law

scientific management A school of thought developed by Frederick Taylor in the early part of the twentieth century that blends economic incentives and industrial engineering methods. Scientific management advocates argued that appropriate task

designs and wage systems could eliminate the sources of conflict between workers and employers

scope of bargaining The breadth of issues discussed in labor negotiations

secondary boycott An effort by a union to create bargaining leverage with a company by convincing customers to boycott stores that sell the firm's products or convincing employees in other companies not to handle the products of the original company

seniority-based pay A pay system in which wages increase with employee tenure that is used widely in Japan

seniority rights Collective bargaining language that requires that length of service be used to decide who gets benefits or job promotions

service sector Jobs that provide services rather than a tangible good. Service workers include retail clerks, social workers, waiters and waitresses, fast food workers, call center workers, teachers, and the like

servicing model The traditional model of union representation that focuses on contract negotiation, contract administration, and the provision of various services to union members

Sherman Antitrust Act (1890) Federal legislation that originally was intended to limit the power of business trusts but was applied to unions in the early part of the twentieth century

shock effect Improvements in the performance of a company that follow after union organization, spurred by management's efforts to maintain competitiveness while paying the higher wages and better benefits gains won by a union

shop steward An union member who provides union services at the shop floor level when a grievance or other dispute arises

sit-down strike A strike in which workers occupy the factory and refuse to leave the premises in an effort to pressure management to meet their demands. Used in the mid-1930s but later ruled illegal

skill-based pay A wage system that provides greater pay (often in stepped increases) as a worker becomes competent in more skills and jobs

social context Social factors such as public attitudes toward unions that are a part of the external environment that influences the bargaining process

social dumping When multinational firms move production to other countries where wages are lower and environmental and business regulations are weaker than those of the home country

Solidarity A Polish labor union led by Lech Walesa. The initial goals of Solidarity, in 1980, were to improve the wages and employment conditions of shipyard workers. Solidarity eventually became a broad social movement and Walesa was elected president of Poland

spring wage offensive The annual setting of wages in a handful of key firms in the spring in Japan. These settlements set a wage pattern that many enterprise unions follow

state mediation and conciliation agencies Various agencies that exist at the state level to facilitate the mediation of labor impasses

Steelworkers' trilogy A trio of Supreme Court decisions (the first appeared in 1960) that elevated the status and role of grievance arbitration. The decisions limited court review of arbitration

stipulation A joint presentation by labor and management made at an arbitration hearing that outlines the areas of agreement and makes it easier for the arbitration hearing to focus on the evidence and the dispute

strategic level The strategies and structures of both management and unions. This is the top tier of industrial relations activity where goals are shaped that have long-term implications for collective bargaining

strike authorization A vote by union members expressing their support for a strike

strike deadline The date at which a collective bargaining contract expires and a strike can start if a settlement is not reached

strike leverage The degree to which labor or management is willing and able to sustain a strike

structural adjustment Macroeconomic policies, government spending reductions, and labor market and labor relations changes that promote market forces that countries introduce so they can conform with directives issued by international agencies such as the IMF and World Bank in response to a country's national debt and balance-of-payment problems

structural factors Historical, political, and social factors that influence union growth

subprocesses of bargaining The various processes of the negotiation of any collective bargaining agreement, such as distributive bargaining, integrative bargaining, intraorganizational bargaining, and attitudinal structuring

substantive regulation Direct government regulation of employment conditions, such as a minimum wage law

supervisor An employee who works in the interest of the employer and has the authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees when these tasks require the use of independent judgment

supervisory board A committee of individuals who monitor managerial performance and appoint top managers in German firms

supplementary unemployment benefit (SUB) Income protection that some unions negotiate for in order to provide benefits during temporary layoffs; this type of benefit supplements unemployment insurance. In some industries, such as the auto industry, SUB benefits (in combination with unemployment insurance) can provide 95 percent of the take-home pay for up to three years

supply effect The lowering of nonunion wages because of employment reductions in the union sector (and subsequent crowding of the labor market in the nonunion sector) caused by union-negotiated wage increases

surface bargaining Bargaining opposite a representative who lacks the authority to make commitments that will stick within the organization; also known as shadow boxing

taking wages out of competition A key goal of unions because it helps a union acquire bargaining power and raise wages. It is achieved when a union has organized a large share of the workers and firms in an industry or sector

Taft-Hartley Act (Labor Management Relations Act, 1947) Amendments to the National Labor Relations Act that were designed to strengthen management's power by eliminating the right of unions to conduct secondary boycotts and by outlining unfair labor practices by unions and the rules governing a union's obligation to bargain in good faith

Taylor Law Legislation that regulates public sector bargaining in New York State. Includes a penalty that deters strikes by public employees by penalizing them one day's pay for each strike day in addition to the day's pay the employees lose while striking

team form of work organization A system in which workers are organized into work groups and perform a set of tasks that is broader than normal. In some teams, workers handle materials, perform inspection and repair duties, and do budget and planning tasks

technological context Technological factors that influence the bargaining process and bargaining outcomes. Important factors include the extent of new technology and the degree to which technology leads to labor displacement or requires high-skilled employees

Texas and New Orleans Railroad Company v. Brotherhood of Railway and Steamship Clerks (1930) A landmark U.S. Supreme Court case that upheld the constitutionality of the Railway Labor Act. This ruling marked the first time the Court recognized the authority of the government to protect the right of workers to organize into unions and to bargain collectively

threat effect The practice some nonunion employers follow of increasing wages and improving other employment conditions in order to deter their employees from unionizing. The threat of unionization impels them to take these actions

Title VII of the Civil Rights Act of 1964 Federal legislation that made discrimination in employment on the basis of race, color, religion, sex, and national origin illegal

total bargaining power The total amount of power labor and management have in a particular situation. This is determined by the economic profit available to each side, which is affected by factors such as the extent of market competition the company faces, the state of the economy, and the level of demand for the products the company makes

trade deficit The amount by which a country's imports exceed its exports

trading group The existence of strong connections between Japanese companies

transfer rights The right of employees to transfer to other jobs within a plant or a company

transitioning economy A country where the labor relations practices and procedures used are more recent in origin and are in many ways in a state of flux

two-tiered wage agreements Wage settlements that simultaneously decrease the pay rates of future hires and maintain or increase the pay rates of current employees

unemployment benefits Payments laid-off workers receive through unemployment insurance systems. Federal legislation guides these systems, but the level and duration of unemployment benefits is regulated and varies by state governments. The unemployment system is funded by tax contributions from employers

unfair labor practices of employers An action by an employer that interferes with or coerces employees or unions with regard to their NLRA rights

unfair labor practices of unions Action by unions that interfere with or coerce union members or employers with regard to their NLRA rights

union decertification An election in which unionized workers vote on whether to terminate their union representation

union democracy The extent to which union members influence union decisions and finances in an open and democratic manner

union density The extent of union membership in a particular work force. This is usually measured as the percentage of the relevant work force that belongs to a union or is covered by a union contract

union effects The extent to which a union is able to increase compensation for workers through contract negotiations

union federation A coalition of unions that usually provides advice to member national unions and engages in political lobbying but does not commonly become directly involved in collective bargaining

union jurisdiction The workers represented by a union. U.S. unions follow a practice of exclusive jurisdiction

union merger The consolidation of two unions, usually intended to increase efficiency, coordinate bargaining, and reduce rivalry

union negotiating committee The union officers, staff, and members who participate in negotiations. This committee usually prepares for negotiations by meeting multiple times before the start of negotiations to formulate the union's list of demands and to form expectations about what the union can win

union security A clause in a collective bargaining agreement that authorizes a union shop or an agency shop

union shop A clause in a collective bargaining agreement that states that all members of the bargaining unit must be dues-paying members of the union as a condition of employment

union suppression A management strategy to prevent union organizing by using threats or by intimidating employees in other ways

U.S. Department of Labor A federal agency that advises the president on labor issues, conducts research and collects data on labor matters, and oversees the administration of many labor policies

United Students Against Sweatshops (USAS) A student organization at U.S. colleges that conducts publicity campaigns in an effort to pressure well-known retailers such as the Gap and Walmart to improve the working conditions of employees of the subcontractors they hire in emerging countries

utopian movement A nineteenth-century social movement dedicated to creating communities of workers, citizens, and consumers who would work and advance together in an effort to avoid the dehumanizing effects of the factory system

voluntary arbitration A dispute resolution procedure in which both parties agree voluntarily to submit a dispute to arbitration. The arbitrator's decision may or may not be binding on the parties

voluntary recognition An employer's voluntary agreement that a union may provide representation for their employees without a representation election. The employer can do this when at least 50 percent of the election unit signs authorization cards

wage administration The implementation of wages and wage adjustments on a daily basis

wage-employment trade-off The extent to which a wage increase leads to declines in employment. This trade-off is determined by the elasticity of demand for labor

wage incentive systems The payment of wages based in part on piece rates or some other measure of the performance of individual workers

wage objectives The wages that management or a union want to achieve through negotiations

wage reopener A stipulation that wages will be renegotiated at some specified point during the life of a contract

War Labor Board A government board created during World War I and World War II to reduce impediments to war production created by labor strife. The boards encouraged union recognition and pattern bargaining and strongly discouraged strikes

welfare capitalism Personnel practices such as job ladders, pensions, and various insurance benefits that management introduces in the hope that they will convince employees to reject unionism

welfare plans Employer-provided health insurance and pension plans regulated under the Employee Retirement Income Security Act (ERISA)

whipsawing Union whipsawing occurs when a union negotiates a bargain at one plant or company and then puts pressure on the next plant or company to equal or surpass the contract terms negotiated at the first site. Employer whipsawing occurs when management wins concessions in one plant or company and then tries to use this as a pattern for concessions in other plants or companies by threatening noncompliant unions with plant closings

wildcat strike A strike by a union that is not sanctioned by the national union. These strikes are typically illegal in U.S. collective bargaining agreements. Unions commonly gave up the right to hold wildcat strikes in exchange for the arbitration-grievance system

work restructuring Rearranging the duties and the responsibilities of jobs or workers in an effort to improve company performance. Introducing work teams, reducing the number of job classifications, and broadening workers' duties are forms of work restructuring

work rules Language or understandings that guide the way work is done and influence matters such as the pace and difficulty of work or the number and scope of job classifications

Worker Adjustment and Retraining Notification Act (1989) Federal legislation that requires employers to provide advance notice to employees affected by plant closings

workingmen's political parties Nineteenth-century political parties that attempted to establish political coalitions to advance the interests of labor

workplace level The lower tier of industrial relations activity that involves relations between workers and supervisors, the attitudes of employees, and other shop-floor issues

works council A committee of employees who have the right to discuss a variety of human resource matters. Authorized through federal legislation in Germany. Works councils are a major feature of the German codetermination system

work sharing An employer's agreement to cut the work week during periods of decline in output instead of laying off employees

yellow-dog contract A contract between an employee and an employer stating that the employee will not join a union or participate in union activities as a condition of employment. Such contracts were outlawed by the Norris-LaGuardia Act

About the Authors

Harry C. Katz is the Jack Sheinkman Professor of Collective Bargaining and Director of the Scheinman Institute on Conflict Resolution at Cornell University's ILR School. He is the president of the Labor and Employment Relations Association. His publications include *Labor Relations in a Globalizing World: An Introduction Focused on Emerging Countries* (with Thomas Kochan and Alexander Colvin, 2015); *Converging Divergences: Worldwide Changes in Employment Systems* (with Owen Darbishire, 2000); *Telecommunications: Restructuring Work and Employment Relations Worldwide* (1997); and *Shifting Gears: Changing Labor Relations in the U.S. Automobile Industry* (1985). Professor Katz received his PhD in Economics from the University of California at Berkeley in 1977.

Thomas A. Kochan is the George M. Bunker Professor of Management at MIT's Sloan School of Management. Kochan is a past president of the Industrial Relations Research Association (IRRA) and the International Labor and Employment Relations Association (ILERA). In 1996, he received the Heneman Career Achievement Award. From 1993 to 1995 he served on the Clinton administration's Commission on the Future of Worker-Management Relations, which investigated ways to improve the productivity and global competitiveness of the American workplace. His publications include *Shaping the Future of Work* (2015); *Labor Relations in a Globalizing World: An Introduction Focused on Emerging Countries* (with Harry Katz and Alexander Colvin, 2015); *After Lean Production: Evolving Employment Practices in the World Auto Industry* (1997); *Employment Relations in a Changing World Economy* (1995); and *The Mutual Gains Enterprise* (1994). Professor Kochan received his PhD in Industrial Relations from the University of Wisconsin in 1973.

Alexander J. S. Colvin is the Martin F. Scheinman Professor of Conflict Resolution and Associate Dean for Academic Affairs, Diversity, and Faculty Development at Cornell University's ILR School. His current research is on arbitration and conflict resolution procedures in nonunion workplaces. His publications include

Arbitration Law (with Katherine /Stone and Richard Bales, 2014); *Labor Relations in a Globalizing World: An Introduction Focused on Emerging Countries* (with Thomas Kochan and Harry Katz, 2015); and *The Oxford Handbook of Conflict Management in Organizations* (with William Roche and Paul Teague, 2014). Professor Colvin received his PhD in Industrial and Labor Relations from Cornell University in 1999 and his JD from the University of Toronto Faculty of Law in 1992.

Professors Katz and Kochan (with Robert McKersie) are the co-authors of *The Transformation of American Industrial Relations*, which was awarded the Terry Book Award in 1988 as the most significant contribution to the field of management by the Academy of Management.

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